



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 18-00415

Appearances

For Government: Tara Karoian, Esquire, Department Counsel
For Applicant: *Pro se*

12/07/2018

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant mitigated security concerns regarding foreign influence and financial considerations, and refuted allegations of falsification covered by personal conduct. Eligibility for access to classified information is granted.

History of Case

On February 28, 2018, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing reasons why DOHA could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or) 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 by Directive 4 of the Security Executive Agent, *National Security Adjudicative Guidelines* (SEAD 4).

Applicant responded to the SOR on March 23, 2018, and requested a hearing. The case was scheduled for hearing on July 26, 2018. A hearing was held on the scheduled date. At the hearing, the Government's case consisted of four exhibits (GE). Applicant relied on one witness (himself) and 14 exhibits. The transcript (Tr.) was received on August 3, 2018.

Besides its four exhibits, the Government requested administrative notice of facts detailed in 13 official source documents that are official Government publications. Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 (App. Bd. April 12, 2007). Administrative notice is appropriate for noticing facts or government reports that are well known. See *Stein*, Administrative Law, Sec. 25.01 (Bender & Co. 2006). For good cause shown, administrative notice was granted with respect to the above-named official background reports addressing the geopolitical situation in Iraq.

Administrative notice was extended to the documents themselves, consistent with the provisions of Rule 201 of Fed. R. Evid. This notice did not foreclose Applicant from challenging the accuracy and reliability of the information contained in the reports addressing Iraq's current status. Nor did the notice foreclose consideration of information about the country not covered in the Government's request for administrative notice, so as to ensure accurate and timely assessments of the country's changing political landscape.

Procedural Issues

Before the close of the proceedings, Applicant requested the record be kept open to permit him the opportunity to supplement the record with his documented surrender of his Iraqi passport. For good cause shown, Applicant was granted seven days to supplement the record. Department Counsel was afforded three days to respond. Within the time permitted, Applicant documented his submission of blood-test information to his sponsor and prospective employer. Applicant's submission was admitted for general background purposes without objection as AE M.

Summary of Pleadings

Under Guideline B, Applicant is alleged in the SOR to have: (a) one brother who is a citizen of Iraq; (b) two brothers who are citizens and residents of Iraq; (c) a sister-in-law who is a citizen and resident of Iraq; and (d) numerous other relatives who are citizens and residents of Iraq.

Under Guideline F, Applicant allegedly began gambling after receiving \$80,000 in inheritance and lost all of his inheritance. Allegedly, he obtained loans from his siblings to continue his gambling and disclosed his gambling activities in the electronic questionnaires for Investigative Processing (e-QIP) he completed in March 2017.

Under Guideline E, Applicant allegedly falsified his answers to questions posed by a counterintelligence investigator in a February 2017 personal subject interview by telling the investigator he transferred his inheritance money to his siblings for safe-keeping, omitting facts that he had already spent the money on gambling. Allegations of incurring gambling losses under Guideline F were incorporated by subparagraph 3.b of Guideline E.

In his response to the SOR allegations covering Guideline B, Applicant partially admitted and partially denied each of the allegations. He claimed his oldest brother is a dual-U.S. citizen who currently resides in the United States and maintains no contact with Applicant. He claimed his two other brothers are Iraqi citizens residing in Iraq who are currently waiting for authorization to immigrate to the United States. He also claimed that his sister-in-law is married to his youngest brother residing in Iraq and does not speak to Applicant. And he claimed that he does not speak with any of his extended family members in Iraq who are employed by the Iraqi government.

Addressing his alleged delinquent debts, Applicant partially admitted and partially denied allegations pertaining to his gambling. He admitted to receiving an inheritance but denies losing all of his inheritance on gambling and obtaining loans from his siblings to finance his gambling. He denied being an abusive gambler and denies engaging in any gambling since 2016.

Responding to Guideline E allegations of (a) falsifying material facts during a counterintelligence-focused security screening by telling an authorized investigator he transferred his inheritance money to his siblings and (b) incorporated allegations of using inheritance money to gamble, Applicant admitted and denied the allegations, claiming he did not lose all of his inheritance money on gambling and was not an abusive gambler.

Findings of Fact

Applicant is a 57-year old linguist for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Background

Applicant was born and raised in Iraq in December 1960 and immigrated to the United States in January 2011 as a refugee. (GEs 1-4 and AEs A and D; Tr. 57) As an approved U.S. refugee, he was issued a green card entitling him to permanent residency status. (GEs 1-4 and AEs A and D; Tr. 49, 57). He qualified for U.S. refugee status due to years of his working for the U.S. Army in Iraq (2004-2009) through his employments by U.S. companies supporting the Iraqi government. (GE 2)

In April 2016, Applicant became a naturalized U.S. citizen and received a U.S. passport in the same month and year. (GE 1 and AEs A and D) He acquired an Iraqi passport after becoming a U.S. citizen due to fears that traveling on a U.S. passport in Iraq would be dangerous. (GE 2) He has since surrendered his Iraqi passport. While Applicant still holds Iraqi citizenship, he has expressed a willingness to renounce it. (GE 4)

Applicant has never married and has no children. (GEs 1-2; Tr. 80) He earned a high school diploma in Iraq in June 1981 and a bachelor's degree from Iraq in June 2003. He reported active duty service in the Iraqi military between December 1982 and October 1990. He maintains no contact with current or former military colleagues. (GE 1-4)

Applicant never served in the U.S. military service due to his being well above the age of qualification when he arrived in the United States. (GEs 1-2) Before immigrating to the United States, he served on active duty with the Iraqi Army as a clerk. (GE 4) His military service was mandated by the Iraqi Government. (GE 4) He received an honorable discharge with the rank of corporal in October 1990 and relinquished all ties with the Iraqi Army. Applicant was awarded no benefits or pension for his Army service. (GE 4)

Since November 2016, Applicant has worked part time with a non-defense transit company as a driver and makes about \$5,000 a month, enough to support himself. (GE 2 and AE L; Tr. 39) His application for a linguist position with a global linguist firm in February 2017 remains on hold pending confirmation of his security clearance. (GEs 1-2)

After immigrating to the United States, Applicant worked for DoD contractors. Between July 2011 and November 2016, Applicant worked for various non-defense retailers in the United States. (GEs 1 and 4 and AE L) He reported brief periods of unemployment between May 2012 and November 2016 when his only financial support came from unemployment disability benefits. (GEs 1-2)

Applicant's family ties in Iraq

Both of Applicant's parents passed away in 2005. (GE 4) While alive, his father was a brigadier general (never in the Ba'ath party) in the Iraqi army before his retirement in 1968. (Tr. 40) Applicant has two brothers who are citizens and residents of Iraq and also served in the Iraqi army. (GEs 1-2 and 4; Tr. 40) He maintains bi-weekly contacts with his youngest brother but never discusses his U.S. Government work out of concern for his safety. (Tr. 64-67) Applicant's younger brother is married, and his wife (Applicant's sister-in-law) is a citizen and resident of Iraq. (GEs 1-2 and 4; Tr. 70-71)

Likewise, Applicant's next-to-youngest brother (middle brother) is also a citizen and resident of Iraq. (Tr. 69-70) But Applicant has not spoken to this brother since 2008.

(Tr. 62) To the best of his knowledge, neither of his brothers residing in Iraq ever worked for the Iraqi government or have any connections with the Iraq government. (Tr. 65-66)

Applicant's oldest brother is a dual citizen of Iraq and the United States, and resides in the United States. (GEs 1-4; Tr. 66-67) His oldest brother was naturalized as a U.S. citizen in March 2018. (AE I) Applicant does not have a close relationship with this brother and maintains infrequent contact with him, despite their close proximity to one another. (Tr. 56-58) Besides his siblings and sister-in-law, Applicant has numerous relatives who are citizens and residents of Iraq. (GEs 1-4) Applicant has no contact with any of these relatives.

Applicant has no financial interests in Iraq and neither provides nor receives financial support from any family member residing in Iraq. (GE 2) Applicant assured that both of his brothers who reside in Iraq live in generally safe and secure areas in the Baghdad region; although they are not completely insulated from risk of harm from corrupt Shiite officials who look to Iran for advice. (Tr. 73-74) But because he has never disclosed what he does for the U.S. Government, Applicant cannot foresee either of his family members in Iraq being exposed to risks of pressure or coercion. (Tr. 62)

In a signed, sworn statement of intent he provided, Applicant pledged (1) to never obtain a foreign passport or foreign citizenship with a country other than the United States again and (2) to continue to have minimal or no contact with foreign contacts outside of his official duties. (AE E) Applicant consented to an automatic revocation of his security clearance should he violate any pledge in his statement of intent. (AE E)

Iraq's country status

Iraq is a country with a population of 27 million that is broken down along ethnic and religious lines: Shiites, Sunni, Kurds and Turkoman comprise the predominant ethnic and sectarian groups. Once known as Mesopotamia (the fertile crescent), Iraq is bordered by Kuwait, Iran, Turkey, Syria, Jordan, and Saudi Arabia. *See Background Note, Iraq*, at 2-3, U.S. Dept. of State (Feb. 2008) At the end of World War I, Iraq became a British-mandated territory, and founding member of the Arab League. (*id.*)

General Abdul Karim Qasim assumed power in a July 1958 coup and held power for five years before succumbing to the Ba'ath Party's takeover of the Iraqi government, and Hasan al-Bakr's selection as prime minister. *See Background Note, Iraq, supra*, at 4. When Bakr resigned in 1979, Saddam Hussein assumed the reigns of power. Under Saddam Hussein's direction, Iraq launched a major invasion of its neighbor, Iran, in the 1980s. *See the World Factbook: Iraq*, U.S. Central Intelligence Agency (Feb. 2018); *Background Note Iraq, supra*. Iraq declared victory in 1988 and survived to claim the largest military establishment in the region. Iraq then turned its forces to mounted

attacks against the ongoing Kurdish rebellion by Kurdish elements in the northern mountains of Iraq. (*id.*)

Iraq invaded Kuwait in August 1990, and was repelled by a U.S.-led coalition in February 1991. See *World Factbook: Iraq, supra*; *Background Note, Iraq, supra*. After the war, the UN Security Council required the Hussein regime to surrender to the coalition and submit to UN inspections. When the Ba'ath regime refused to fully comply, the Security Council invoked sanctions to prevent further weapons of mass destruction (WMD) development, and to enforce Iraq's surrender terms. Coalition forces employed limited no-fly zones in southern and northern Iraq and a limited no-drive zone in southern Iraq to prevent the regime from invading Kuwait again. (*id.*)

In 2003, A U.S.-led coalition invaded Iraq and succeeded in removing Saddam Hussein and his Ba'athist regime from military and political power. See *The World Factbook: Iraq, supra*; *Background Note Iraq, supra*, at 3. After two years of operations under a provisional authority, Iraq's new government assumed office in March 2006 (with the approval of the U.S. Government), following free elections. (*id.*)

Notwithstanding the election of a new national government with U.S. backing, violence continued to envelop Iraq. This violence was fueled and perpetrated by Al Qieda terrorists, Sunni insurgents, and, Shiite militias and death squads. See *The World Factbook: Iraq, supra*; *Background Note Iraq, supra*. State Department reports document human rights abuses that include a "pervasive climate of violence, misappropriation of official authority by sectarian, criminal and insurgent groups; arbitrary deprivation of life, disappearances, torture and other cruel, inhumane or degrading treatment or punishment." (*id.*)

Since March 2006, the Government of Iraq has been comprised of a broad coalition of political alliances representing the Shiite, Sunni and Kurdish blocs. See *The World Factbook: Iraq, supra*, at 2; *Background Note Iraq, supra*, at 8. While elections have been held, none of the key constituent groups have been able to form a government, adopt an oil law, establish and maintain effective security throughout the provinces, or neutralize sectarian divisions. In this still very fragile political environment in Iraq, there are substantiated reports of human rights abuses that continue to underscore a still pervasive climate of tension and violence.

Economic developments

Economically, Iraq's economy continues to be dominated by the oil sector, as it has for the past half century since the completion of new pipelines to Lebanon in 1949, and to Syria in 1952. See *The World Factbook: Iraq, supra*; *Background Note Iraq, supra*. As a result of the U.S.-led invasion in 2003, much of Iraq's oil refining capabilities were shuttered. The rebuilding of oil infrastructure and utilities infrastructure has continued to expand since 2004 with U.S. aid and support, despite setbacks from insurgent activity.

Proposed oil revenue sharing legislation among the three war-hardened ethno-sectarian divisions (Shia, Sunnis, and Kurds) still awaits passage after years of stalled negotiations, however, and at the moment, there are no good estimates of when such legislation will be approved and implemented. See *Statement for the Record, Worldwide Threat Assessment of the US Intelligence Community*, U.S. Director of National Intelligence (Feb. 2018) For the foreseeable future, the national government can be expected to continue to seek the passage and implementation of a revenue sharing law to strengthen and encourage the development of this important sector. See *id.*

Recent reports (although not official U.S. pronouncements) suggest that Baghdad is close to agreement with the semi-autonomous Kurdish regional government (KRG) to restart crude flowing from the Kirkuk oil fields as U.S. sanctions against Iran hit Iran's energy sales. See *Iraq closing in on Deal to Resume Kirkuk Oil Exports*, Reuters/Bloomberg (Nov. 2018). If these estimates prove to be accurate, they would be welcomed by both U.S. and allied Interests. For despite Iraq's producing 4.3 million barrels of oil per day, according to published reports, Iraq's population remains poor. See *Putting Iraq-KRG Oil Relations on Solid Legal Ground*, the Washington Institute for Near East Policy (July 2018). Currently, the case brought by the federal government of Iraq against the KRG in 2012 over the legality of the KRG's oil contracts and independent exports remains pending with no disposition projected in the near future. See *id.*

Past budget laws passed by Iraq's national parliament requiring the KRG to contribute certain export earnings in the country's overall exports (a law that would seem to legitimate the KRG's ownership claims to Kirkuk oil) have never led federal authorities to export Kirkuk-produced oil. In so doing, Iraq's federal authorities have severely limited Iraq's northern export outlet via the Kurdish pipeline to Turkey. Breaking the oil-stalemate that existed for years between the KRG and Iraq's federal government can have major positive ramifications for not only Iraq and its oil exports, but for the United States and other Western interests as well.

Terrorism and human rights issues

Despite recent improvements in its security enforcement efforts, Iraq remains a very dangerous, volatile and unpredictable country. The U.S. State Department continues to strongly warn U.S. citizens against traveling to Iraq. See *Travel Advisory-Iraq*, U.S. Dept. of State (Jan. 2018); Request for Administrative Notice, *supra*, a 3-4. The State Department assessed Baghdad as being a critical-threat location for crime directed at or affecting official U.S. interests. See *Iraq 2017 Crime and Safety Report: Baghdad* at 2-3. U.S. Dept. of State (March 2017) While crime statistics and crime reporting mechanisms are incomplete and inconsistent, the vast majority of individuals under contract with, or employed by, the U.S. Government in Iraq are required to travel with a protective security detail, so as to limit potential criminal threats against them. (*id.*)

Attacks against military and civilian targets throughout Iraq continue and include sites and facilities where foreign tourists frequently visit: hotels, restaurants, police stations, check points, foreign diplomatic missions, international organizations, and other locations with expatriate personnel. See *Travel Advisory-Iraq, supra*, and *Security Message: Expanded Temporary Movement Restriction*, U.S. Department of State (December 2017) The U.S. Embassy's ability to provide consular services to U.S. citizens outside Baghdad is extremely limited under the security environment that still exists in Iraq. See *Country Information: Iraq: Safety and Security*, U.S. Dept. of State (July 2017); Request for Administrative Notice, *supra* at 3-4.

The U.S. Government considers the potential security threats to U.S. government personnel in Iraq to be sufficiently serious to require them to live and work under strict security guidelines. See *Country Information: Iraq: Safety and Security, supra*; Request for Administrative Notice, *supra* at 3-4. The U.S. Embassy's ability to provide consular services to U.S. citizens outside of Baghdad is extremely limited under the security environment that exists in Iraq. See *Country Information: Iraq: Safety and Security*, U.S. Dept. of State (July 2017); Request for Administrative Notice, *supra* at 3-4. Terrorist groups continue to mount attacks throughout Iraq and pose heightened risks to U.S. citizens and their family members residing in Iraq. See *Country Reports on Terrorism 2016*, US. Dept. of State (July 2017); Request for Administrative Notice, *supra* at 3-4.

To deal with expanded terrorist attacks against U.S. citizens in Iraq, the U.S. Embassy has expanded its temporary movement restrictions on Embassy personnel, both inside and outside the international zone, in response to the recent announcement that the United States recognizes Jerusalem as the capital of Israel. See *Iraq 2017 Crime and Safety Situation, U.S. Department of State* (March 2017); *Security Message: Expanded Temporary Movement Restriction, supra*, at 2-3; and Request for Administrative Notice, *supra*, at 4.

In December 2015, President Obama signed into law the Visa Waiver Program Improvement and Terrorist Travel Protection Act of 2015, which amended the existing Waiver Program. See H.R. 158 Visa Waiver Program Improvement and Terrorist Travel Protection Act of 2015, enacted as Public Law 114-113 (129 Stat, 2242), Dec. 18, 2015. Under the 2015 amendment, citizens of Iran, Iraq, Sudan, and Syria are ineligible to travel or be admitted to the United States under the Visa Waiver Program. See Request for Administrative Notice, *supra*, at 7 for additional coverage citation.

Iraq's human rights record remains a poor one. Based on the U.S. State Department's most recent annual human rights report, violence continued throughout 2017, largely fueled by the actions of the Islamic state in Iraq (ISIS). See *Statement for the Record, Worldwide Threat Assessment of the US Intelligence Community, supra*. After liberating all territory taken by ISIS by the end of 2017, Iraqi Security Forces (ISF) have continued to pursue and restrict ISIS forces still active in Iraq.

Reports of human rights abuses include allegations of unlawful killings by some members of the ISF (particularly by some members of the Popular Mobilization Forces (PMF)). Reports of human rights abuses also include allegations of unlawful killings, torture, harsh and life-threatening conditions in detention and prison facilities, criminalization of libel and other limits on freedom of expression, widespread corruption,

greatly reduced penalties for so-called honor killings, coerced or forced abortions imposed by ISIS on its victims, legal restrictions imposed on the freedom of movement of women, and trafficking in persons. See *Country Reports on Human Rights Practices for 2017*, U.S. Department of State (April 2018); Request for Administrative Notice, *supra*.

Implications of the results of Iraq's 2018 federal election on U.S. policy

In May 2018, Iraq held its parliamentary elections that many believed would produce a new beginning for Iraq and foster progress in the country's historically intractable issues covering such areas as endemic corruption, violent instability, and social/political polarization. See *R. Alaaldin, What Iraq's election Results Mean for U.S. Policy* at 1-6. Brookings at <https://brookings.edu/blog/order-from-chaos> (May 2018). This parliamentary election marks the first such federal election since the defeat of ISIS in December 2017 and was historic in many respects with over 7,000 candidates vying for 329 seats. See *The World Factbook: Iraq, supra* and *R. Alaaldin, What Iraq's Election Results Mean for U.S. Policy, supra*.

Despite heavy media coverage and high hopes surrounding election prospects for the prime minister, al-Abadi failed to alleviate religious tension and develop a national consensus in Iraq on the importance of secular governance (only 44.5 per cent, the lowest turnout since 2003), Iraq's elections did, however, herald a new chapter for the victorious Sadrist movement headed by Shia cleric Muqtada al-Sadr and his millions of underclass followers. See <https://brookings.edu/blog/order-from-chaos>, *supra*. According to Brookings reports, the Winner of the May 2018 election was al-Sadr's al-Sa'iroohn coalition with 54 seats, followed by the Fatah bloc, headed by Hadi al-Amiri who has reported close ties with Iran, with 47 seats, and the Nasr coalition, headed by al-Abadi with 42 seats. (*id.*) Election results were confirmed by Iraq's top election body in June 2018 following a country-wide manual count, clearing the path for political parties to form a government. See <https://www.wsj.com> (Aug. 9, 2018)

While prospects for forming a government between the three principal coalitions are still uncertain, reported public statements about creating an alliance between al-Sadr's and al-Bati's respective coalitions offer promise for Iraq in the wake of widely discredited elections. See *F. Hassan and R. Nordland, Iraqi Political Alliance Unites a U.S. Friend and Foe*, <https://www.nytimes.com>. And although these reports do not represent official U.S. pronouncements, they are illustrative of the major political changes that are gaining traction in Iraq and bear watching.

For Applicant, a Sunni by birth, prospects for uniting the various sectarian groups under a united umbrella headed by al-Sadr are not very promising. In Applicant's estimation, the formation of a new government comprised of the three principal Shiite coalitions is likely to further marginalize Sunnis as a political force among Iraq's

governing elites. (Tr. 74) Applicant posited that the cleric al-Sadr and all of the Shiite parties in Iraq will continue to be influenced by Iran. (Tr. 74)

Current U.S. Relations with Iraq

The U.S. Mission in Iraq remains dedicated to building a strategic partnership with Iraq and the Iraqi people. See *U.S. Relations with Iraq* at 1-2, U.S. Dept. of State (July 2018). In coordination with the Global Coalition to defeat ISIS, the United States assisted Iraq's efforts to achieve the long-sought goal of liberating all of Iraqi territory from ISIS. The Strategic framework agreement (SFA) between Iraq and the United States provides the basis of the United States's bilateral relationship with Iraq and covers a wide range of bilateral issues, including political relations and diplomacy, defense and security, trade and finance, energy, judicial and law enforcement issues, services, science, culture, education, and environment. (*id.*)

U.S. bilateral assistance to Iraq is considerable and stresses economic reform, assistance to vulnerable groups, and democracy and governance. See *U.S. Relations with Iraq, supra*. U.S. security assistance supports the development of modern, accountable, fiscally sustainable, and professional Iraqi military resources capable of defending Iraq and its borders. The United States has designated Iraq as a beneficiary developing country under the Generalized System of Preferences program and has been proactive in the promotion of two-way trade between the United States and Iraq. (*id.*, at 2) Noteworthy, Iraq's re-integration into the international community has been marked by their demonstrated cooperation with international institutions, including the United Nations, International Monetary Fund, World Bank, and the Arab League. (*id.*)

Applicant's finances

Before immigrating to the United States in 2011, Applicant maintained an Iraqi bank account from approximately 1966 through 2009, when he closed the account. (GE 2) The account was opened by his father and was later supplemented by inheritance funds from a real estate sale that approximated \$80,000. (GEs 2 and 4; Tr. 37-38) Combined with funds from his prior employment with U.S. companies, he amassed \$105,000 in the account by 2009. (GE 2)

In preparation for his planned travels to Jordan in 2009, Applicant closed his bank account and transferred \$95,000 of the closed-out bank funds to his sister for safekeeping during his travels, inclusive of the \$80,000 of inheritance monies and the additional \$15,000 he had earned. (GE 2; Tr. 50-51) Before departing for his Jordan trip, he retrieved the \$95,000 he left with his sister and left the remaining \$10,000 with his middle brother for safekeeping. (GEs 2 and 4; Tr. 37-38)

While traveling in Jordan and Lebanon in 2009-2010, Applicant lost most of these inherited funds and continued to gamble with loaned funds from his sister and brother

(\$4,000 and \$1,000, respectively). Applicant never told any of his family members that he used his inherited \$80,000 to gamble with, because in Iraq gambling is frowned upon. (Tr. 53-54) And telling any of his family members about his gambling he believed would have shamed him with family members and exposed him to potential blackmail. (Tr. 53-54) Since ceasing his gambling activities, Applicant no longer fears telling his younger brother about his past gambling and losses. (Tr. 55)

After both of his Iraqi-based brothers applied for visas to come to the United States, Applicant told his sister who lives in the United States not to tell any of his brothers or other family members about his use of inheritance funds to further his gambling, and she did not to Applicant's knowledge. (Tr. 53) Other family members who are citizens of Iraq include aunts, uncles, nephews, and nieces to whom he maintains no contact, and presumably know nothing about his personal finances.

When interviewed by an agent of the Office of Personnel Management (OPM) in April 2017, Applicant traced his principal gambling activities to the 2009-2010 time frame. (GE 4) He confirmed having \$80,000 of inherited money, which he initially deposited with a local Iraqi bank before withdrawing the monies (\$95,000, inclusive of the inherited funds) and placing them with sister for safekeeping before retrieving the funds (save for the \$10,000 he left with his youngest brother) and subsequently losing his retrieved funds to gambling in casinos while traveling in Jordan and Lebanon. (GE 4) He confirmed to the OPM agent that after migrating to the United States in 2011, he continued his gambling, losing \$1,000 or more a week, and all of the \$10,000 he had stored with his youngest brother and later carried with him to the United States in 2011. (GE 4; Tr. 52, 56)

To finance his gambling interests, Applicant borrowed over \$4,000 from his sister and \$1,000 from his brother. (GE 4) While denying any addiction to gambling, he indicated that the stroke he suffered in August 2015 was likely attributable to losing all of his savings to gambling. (Tr. 52-53) Still, he affirmed to the OPM agent that he continued to gamble while avoiding any disclosure of his gambling to his siblings who frown on the activity. (GE 4)

Applicant assured at the hearing that he has learned important lessons of conserving his financial resources since losing his inheritance money on gambling. (Tr. 57) In a March 2018 signed, sworn statement he provided at hearing, he pledged to never excessively gamble again. (AE F) By 2015, Applicant (working three jobs) had completed his installment repayments of the monies he borrowed from his sister and youngest brother. (Tr. 56-59) Applicant's assurances are credible and accepted.

In the personal financial statement he prepared in February 2017, Applicant reported net monthly income of \$899 (inclusive of \$189 of food stamps) and monthly expenses of \$657. (GE 3) He reported no outstanding debts and a net remainder of \$468. (GE 3)

Applicant's screening questionnaire omissions

During a counter-intelligence-focused security clearance screening questionnaire conducted in February 2017 by an authorized investigator of DoD, Applicant told the investigator he transferred his inheritance money to his siblings for safe-keeping. (GE 2) Whether the investigator ever asked Applicant if the monies were returned to him by his sister prior to his departure for Jordan in 2009 is unclear. The screening questionnaire is silent on the question, and Applicant could not remember if he was asked the question by the agent. (GE 2; Tr. 50-51)

Without any evidence of Applicant's being asked whether the monies were returned by his siblings, no inferences of falsification of his screening questionnaire can be reasonably drawn. Further, when afforded opportunities to voluntarily disclose his gambling losses and loans from his siblings to cover his losses, he did so without prompting. (GE 4; Tr. 51-54)

Endorsements

Applicant is well regarded by U.S. advisors operating in Iraq who worked with Applicant in the November 2004-March 2005 time frame. (AE C) Project leaders in Iraq who interacted with Applicant between 2004 and 2008 described him as highly competent and honest in the translation services he provided. (AE C) They found him to be honest, reliable, and trustworthy in the translation of documents assigned to him despite his absence of formal training in translation services. (AE C) Many of his translation assignments were difficult and required handling in dangerous conditions.

Applicant is credited with completing a number of courses for his work with U.S. advisors in Iraq. Certificates of training completion earned by Applicant include the following areas: procurement systems, advanced driving, strengthening local government and provincial governance, and safety skills. (AE G) Applicant is credited with receiving numerous awards in recognition of his contributions to the U.S. war effort in Iraq in 2004-2008

Policies

The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns if any.

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following 2(a) factors: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

Foreign Influence

The Concern: Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are 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 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. (see AG ¶ 6)

Personal Conduct

The Concern: 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 information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . . (AG, ¶ 15)

Financial Considerations

The Concern: 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 risk of having to engage in illegal 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, ¶ 18)

Burden of Proof

By virtue of the principles and policies framed by the revised AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *Kungys v. United States*, 485 U.S. 759, 792-800 (1988). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of

establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his clearance eligibility. “[S]ecurity-clearance determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Applicant is a dual citizen of Iraq and the United States who has family members (two younger brothers, a sister-in-law, and numerous relatives) who are citizens and residents of Iraq. Trust concerns are raised under the foreign influence guideline due to Applicant’s longstanding family ties to Iraq. Although his contacts with his brothers and sister-in-law residing in Iraq appear to be somewhat limited, they do involve close family members. While Iraq is a liberated ally of the United States, it is a country that has encountered difficulty forming a government in the past and continues to experience ethno-sectarian conflicts between principal factions and is considered an with a poor human rights record and an unsafe country for U.S. citizens to visit by the U.S. State Department. Additional security concerns over Applicant’s finances and screening question omissions are also raised.

Foreign influence concerns

Key to the Government’s foreign influence concerns are Applicant’s immediate family members (i.e., his two younger brothers and sister-law) who are Iraqi citizens and still reside in Iraq, a country that is still in the process of establishing a stable democratic government able to protect all of its disparate constituent groups and maintain peace with its neighbors. Despite encouraging developments in Iraq following the federal elections of May 2018, Iraq is still a very dangerous and volatile country in certain sectors with an overall poor human rights record and heightened risks of terrorism in most sectors of the country.

Applicant’s historically close relationships with his two brothers and sister-in-law residing in Iraq make them potentially vulnerable to coercion and non-coercive measures because of their close familial family ties with Applicant. Because the Iraq Security Forces (ISF) and non-governmental entities (principally ISIS) operating in Iraq, as well as the former Iraqi military and intelligence authorities, have a history of violating Iraqi domestic laws and regulations, and international laws, they are more likely to use improper and/or illegal means to obtain classified information in Applicant’s possession or control through his siblings and in-laws.

Noting that Applicant’s contacts with his Iraqi family members typically take place in potentially hostile security environs, the Government urges security concerns over risks that his telephonic contacts with his family members (principally his younger

brothers and sister-in-law) might be subject to exploitation, coercion, or duress by Iraqi military and government authorities to access classified information in Applicant's possession or control. Applicant's activities warrant some application of two of the disqualifying conditions of the foreign influence guideline: DC ¶ 7(a), "contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." The citizenship/residence status of Applicant's siblings and sister-in-law in Iraq pose some potential concerns for Applicant because of the risks of undue foreign influence that could compromise sensitive or classified information under Applicant's possession and/or control.

Although neither of Applicant's siblings nor sister-in-law in Iraq have any identified Iraqi military or government service, or other demonstrated links to the Iraqi government, they remain potentially vulnerable to pressure and coercion for so long as they reside in Iraq (even in places considered to be generally safe from terrorist threats). Were any of these family members to be placed in a hostage situation, Applicant could be subject to conflicts over ensuring his family's well being and protecting classified information. For this reason, DC ¶ 7(b), "connection 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," is applicable to the facts of this case.

Still, from the evidence presented, neither of Applicant's brothers and sister-in-law residing in Iraq have any history to date of being subjected to any coercion or influence. These historical antecedents limit the risk of any potential conflict situation. And while the absence of any past coercive measures taken by Iraqi authorities does not absolve Applicant from coercive risks in the future given Iraq's checkered history of political instability, violence, hostage taking, and abusive measures taken against its own citizens, the absence of any evidence of pressure or coercion in their family history is worthy of considerable weight in assessing foreign influence risks of a potential hostage situation with Applicant's family members residing in Iraq.

The AGs governing security clearances do not dictate *per se* results or mandate particular outcomes for any chosen set of guidelines covering risks of foreign influence. What is considered to be an acceptable risk in one foreign country may not be in another. While foreign influence cases must by practical necessity be weighed on a case-by-case basis, guidelines are available for referencing. Personnel security assessments necessarily embrace similar risk assessments under the new AGs for assessing foreign influence risks and concerns associated with the individual's having family abroad, which include both common sense assessments of country risks and information available from public sources.

Mitigation is available to Applicant under the foreign influence guideline of the AGs. Based on his case-specific circumstances, mitigating condition (MC) ¶ 8(a), “the nature of the relationships with foreign persons, the country in which these persons are located, or the persons or activities of these 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 a foreign individual, group, organization, or government and the interests of the United States.” is applicable to Applicant’s situation. Information about Applicant’s family members residing in Iraq, while limited, is enough to permit safe predictions about their future safety and exposure to risks of pressure and compromise

Of benefit to Applicant is MC ¶ 8(b), “there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.” Applicant’s demonstrated service to U.S. defense contractors operating in Iraq, while still a resident and citizen of Iraq in the 2004-2008 time period, is impressive and valued by the defense contractors and U.S service members he worked for. His contributions to the U.S. defense effort are substantiated by the numerous endorsements, certificates of training, and awards he received while working as a linguist for U.S. contractors and military service members he worked with in Iraq between 2004 and 2008. Applicant’s documented contributions to the U.S. defense initiatives in Iraq are sufficiently demonstrated to warrant full application of MC ¶ 8(b).

Heightened risks associated with Applicant’s presumed close relationships with his younger brothers and sister-in-law residing in Iraq can be safely discounted considering all the facts and circumstances associated with his work as a linguist for U.S. contractors operating in Iraq and relationships with his siblings and sister-in-law in Iraq. Iraq’s strategic location and political character and Applicant’s case specific relationships with his family members in Iraq are reconcilable with his holding a security clearance to continue his work as a linguist. His demonstrated honest, integrity, and trustworthiness are established and enable him to overcome security concerns over his having family members in Iraq and enable him to surmount foreign influence concerns.

Financial concerns

Applicant’s accumulated gambling losses with money inherited from his family in 2009 and later borrowed from his brother and sister are fully documented and provide ample proof of the source of his funds and losses. Applicant does not dispute his use of family inheritance and loans in 2009 to pursue his gambling activities in casinos located in Lebanon and Jordan. His claims that he has not engaged in gambling of any kind since 2016 are supported by the admissions he provided the

OPM agent who interviewed him in May 2017 and his statement of intent. Based on the evidence developed in the record, application of two of the disqualifying conditions (DC) of the Guidelines are warranted: DC ¶¶ 19(h), “borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts,” and 19(i), “concealing gambling losses, family conflict, or other problems caused by gambling.”

Holding a security clearance involves a fiduciary relationship between the Government and the clearance holder. Quite apart from any agreement the clearance holder may have signed with the Government, the nature of the clearance holder’s duties and access to classified information necessarily imposes important duties of trust and candor on the clearance holder that are considerably higher than those typically imposed on government employees and contractors involved in other lines of government business. (see *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980)) Failure of an applicant to make more concerted efforts to pay or resolve his debts when able to do so raises security-significant concerns about the sufficiency of the applicant’s demonstrated trust and judgment necessary to safeguard classified information.

Extenuating circumstances were never an issue in Applicant’s gambling decisions. Applicant committed his inherited and borrowed funds he received from family members to finance his gambling interests without any influence brought to bear from family members and friends. His accrued gambling losses with the monies he received from his family in inheritance and loans from his sister and youngest brother to cover additional gambling have since been repaid.

Applicant has learned valuable lessons about the importance of conserving his financial resources and has pledged to never excessively gamble again. (AE F) Working three jobs, he completed his instalment repayments of the monies he borrowed from his sister and youngest brother and is currently debt-free. Financial concerns and personal conduct concerns associated with his past gambling losses are mitigated. Favorable conclusions warrant with respect to the allegations covered by Guidelines F and E.

Falsification concerns

Additional security concerns are raised over Applicant’s falsifying his answers to questions posed by a counterintelligence investigator in a February 2017 personal subject interview by telling the investigator he transferred his inheritance money to his siblings for safekeeping without disclosing his retrieval of the monies in preparation for his travel to Jordan. Applicant’s statements to the investigator were accurate regarding his initial transfers to his siblings for safekeeping, but did not include any answers about his ensuing retrieval of the funds he left with his sister for safekeeping. Applicant was never asked by the DoD investigator whether these monies were returned to him by his sister, and Applicant never volunteered the information. Without probative

evidence of Applicant's withholding evidence from the DoD investigator about his retrieved funds from his sister, no inferences can be reasonably drawn of Applicant's intentionally withholding information.

Taking into account all of the evidence and circumstances surrounding Applicant's omissions of the circumstances surrounding his disposition of inheritance and borrowed funds from his siblings after retrieving most of the funds, conclusions warrant that the allegations are unsubstantiated. Favorable conclusions are warranted with respect to the allegations covered by Guideline E.

Whole-person assessment

Whole-person assessment of Applicant's foreign influence risks to ascertain whether they are fully compatible with eligibility requirements for holding a security clearance takes account of Applicant's immigration to the United States to pursue a linguist career with the skills he acquired as a linguist in Iraq. The linguist services he provided for defense contractors operating in Iraq in the 2004-2008 time frame were well received by his superiors and are worthy of commendation. His valued services to his defense contractor employers are enough to overcome the Government's security concerns over the heightened risks that his siblings and sister-in-law present as citizens and residents of Iraq. Both foreign influence and financial concerns raised over his gambling losses are mitigated. Further, security concerns raised over his omissions of his gambling losses in the clearance screening questionnaire answers he provided the interviewing investigator are unsubstantiated. Favorable conclusions are warranted with respect to foreign influence, financial, and personal conduct concerns.

Formal Findings

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions, and the factors and conditions listed above, I make the following separate formal findings with respect to Applicant's eligibility for a security clearance.

GUIDELINE B (FOREIGN INFLUENCE):	FOR APPLICANT
Subparas 1.a-1.d:	For Applicant
GUIDELINE F (FINANCIAL CONSIDERATIONS):	FOR APPLICANT
Subpara. 2.a:	For Applicant
GUIDELINE E ([PERSONAL CONDUCT]):	FOR APPLICANT
Subparas 3.a-3.b:	For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant access to classified information. Clearance is granted

Roger C. Wesley
Administrative Judge