



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



In the matter of:)	
)	
)	ISCR Case No. 18-01207
)	
Applicant for Security Clearance)	

Appearances

For Government: Brittany Muetzel, Esq., Department Counsel
For Applicant: *Pro se*

12/07/2018

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the Guideline B, foreign influence concerns. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On April 30, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B. The DOD CAF acted 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), effective June 8, 2017 (AG).

Applicant answered the SOR on June 24, 2018, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on August 7, 2018. The evidence

included in the FORM is identified as Items 3-5 (Items 1 and 2 include pleadings and transmittal information). The FORM was mailed to Applicant, who received it on September 15, 2018. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not file objections, but submitted exhibit (AE) A, which is admitted without objection. Items 3-5 are also admitted into evidence without objection. The case was assigned to me on November 2, 2018.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the SOR allegations with explanations. The admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

The SOR alleged Applicant's mother and three brothers are citizens and residents of Iraq. (SOR ¶¶ 1.a-1.d).

Applicant is 47 years old. He was born in Iraq in 1970. He served in mandatory conscripted military and Ba'ath party service from 1988-1993. He moved to Dubai, United Arab Emirates, in 2005 and resided there until 2007, when he moved back to Iraq. He worked as a translator with U.S. forces in Iraq from 2007-2009. Because of his work with U.S. forces, he qualified for a special immigrant visa. He used that visa to immigrate to the United States in 2009. He was awarded an associate's degree from a U.S. community college in 2014. He became a U.S. citizen in March 2015. He is seeking a clearance for a translator position with a federal contractor. He is currently working for the contractor and deployed to Iraq. He is single with no children.¹

Foreign Influence.

Applicant has the following relatives who are residents and citizens of Iraq:

1. His mother. His mother is 70 years and is a housewife. She is not affiliated with the government or the military. Applicant has weekly telephone contact with her. She is unaware of his work position and he has not visited her since moving to the United States in 2009.²

2. Applicant's three brothers. His three brothers are younger. None of his brothers know what he does for a living or where he works. None of his brothers have any Iraqi government connections. Applicant's telephone contact with his brothers ranges from quarterly to annually.³

¹ Items 3-5.

² Item 4; AE A.

³ Item 4; AE A.

Iraq.

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.⁴

Character Evidence.

Applicant supplied character references from his last two commanders for whom he conducted translator duties at various times during 2018. His commanders found Applicant to be professional and completely devoted to the U.S. Army and his country. He was described as creating “enhanced situational awareness on the battlefield, contributing significantly to the defeat of the Islamic State of Iraq and Syria (ISIS).” Additionally, they describe him as an outstanding asset whom they trust. They recommend granting his clearance.⁵

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.

⁴ The Government failed to provide information concerning the country of Iraq for the purpose of taking administrative notice. I take administrative notice of the stated information from the U.S. Department of State website (<https://iq.usembassy.gov/iraq-travel-warning-january-31-2017/>). See FRE 201 and 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).

⁵ Item 2.

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

¶ 7: The security concern relating to the guideline for foreign influence is set out in AG

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; 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.

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 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 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."⁶ 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 or his relatives living in Iraq, it is not possible to rule out such a possibility in the future. AG ¶¶ 7(a) and 7(b) apply based upon Applicant's family members who are residents and citizens of Iraq.

⁶ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

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.

AG ¶ 8(a) does not apply. Applicant's current translator position could cause him to be placed in a position to choose between the interests of his relatives and those of the United States. Applicant credibly testified that he has limited contact with his relatives in Iraq. AG ¶ 8(c) partially 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 2007 to 2009 for U.S. forces in Iraq. Additionally, as recently as this year, Applicant also worked as a translator for U.S. forces in Iraq where he earned praise for his loyalty, bravery, and trustworthiness while serving in harm's way. He moved to the United States in 2009, earned an associates degree here, and became a U.S. citizen in 2015. The evidence supports the conclusion 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.

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(a):

(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 recommendations of his two commanders, who resoundingly recommend that Applicant be granted his security clearance. I also considered his strong ties to this country, as a translator serving in harm's way while assisting U.S. forces on two separate occasions. He has demonstrated his longstanding loyalty to the United States. Therefore, he provided sufficient evidence to mitigate the security concerns.

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 concerns were mitigated.

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:

Subparagraphs 1.a – 1.d:

For Applicant

Conclusion

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

Robert E. Coacher
Administrative Judge