



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



In the matter of:	)	
	)	
	)	ISCR Case No. 18-01471
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*

10/25/2019

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**Decision**

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GLENDON, John Bayard, Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence). Applicant has family members who are citizens and residents of Iraq. Applicant's evidence in mitigation was insufficient to mitigate security concerns raised by his family circumstances. Based upon the record evidence as a whole, eligibility for access to classified information is denied.

**Statement of the Case**

On July 21, 2017, Applicant submitted a security clearance application (SCA) in connection with his employment. On July 2, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline B. The DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive); and the adjudicative guidelines (AG)

promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (Dec. 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant responded to the SOR on August 31, 2018. He requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On July 17, 2019, the case was assigned to me. DOHA issued a notice of hearing on September 6, 2019, scheduling the hearing on September 26, 2019.

I convened the hearing as scheduled. Department Counsel offered three documents, which I marked as Government Exhibits (GE) 1 - 3. She also requested that I marked the Department Counsel's Exhibit List as Hearing Exhibit 1. Applicant raised no objection to the Government's proposed exhibits and offered no exhibits of his own at the hearing. I left the record open until October 3, 2019, to allow Applicant the opportunity to make a post-hearing submission and to make any corrections to GE 2, which is the report of investigation summarizing Applicant's August 19, 2017 background interview. On October 1, 2019, he sent a document to me by e-mail, which I marked as Applicant's Exhibit (AE) A. In his e-mail, he noted that he had no corrections to GE 2. On October 2, 2019, Department Counsel advised me in an e-mail that she had no objection to AE A. All exhibits were admitted into the record. I have marked the two referenced emails as Hearing Exhibits 2 and 3. DOHA received the transcript (Tr.) on October 15, 2019.

### **Request for Administrative Notice**

Department Counsel submitted a written request that I take administrative notice of certain facts about the Republic of Iraq (Iraq). I have marked this request as Hearing Exhibit 4. Applicant did not object to this request, and I have taken administrative notice of the facts contained in the request that are supported by source documents that are official U.S. Government publications. The facts are summarized in the Findings of Fact, below. Department Counsel made no request that I take administrative notice of facts regarding Egypt.

### **Findings of Fact**

Applicant admitted, with explanations, the five allegations in the SOR. I have incorporated his admissions in my findings of fact. Applicant's personal information is extracted from GE 1, his SCA, unless otherwise indicated by a parenthetical citation to the record. After a thorough and careful review of the pleadings, the hearing testimony, and the documentary evidence, I make the following findings of fact.

Applicant was born in Iraq in 1973 and is presently 46 years old. He and his wife were married in Iraq in 1997. They and two of their three children entered the United States in 2009. Applicant entered the United States as a refugee at the age of 35. In 2011, he and his wife had a third child, who was born in the United States. Applicant became a naturalized U.S. citizen in 2014. His wife and two oldest children have also become naturalized U.S. citizens. (Tr. 14-15; GE 2 at 2; GE 3 at 32.)

In 1996, Applicant received an engineering degree in Iraq. For a little less than two years ending in 2005, Applicant's Iraqi engineering company worked with the U.S. Army under a contract. Through his company, he performed services on several infrastructure projects, such as potable water, sewer systems, storm drains and road paving. In 2005, he received two anonymous threats by phone from a terrorist organization telling him to stop working for the United States. He then received an even more threatening warning and decided that his life was at risk. After living in Iraq for the first 30 years of his life, he took his family to Egypt, where they lived until 2009. During that period, he returned to Iraq on several occasions. He was unable to work in Egypt because he was not an Egyptian citizen. He learned about an organization that assists refugees to relocate to the United States. In 2009, he successfully sought refuge in this country. (Tr. 7, 30; GE 2 at 2; AE A.)

Once in the United States, Applicant purchased a gas station and operated it for about three years. He purchased a home in 2014 after he sold the gas station. He subsequently bought a less expensive home where he and his family presently reside. (Tr. 16-17.)

Applicant's parents and two siblings also immigrated to the United States with him in 2009 and became U.S. citizens. Applicant's father worked in the Iraqi Ministry of Trade as an accounting manager before he immigrated to the United States. Applicant's mother is and always has been a housewife. Left behind in Iraq is one brother and his wife (SOR ¶ 1.a), his wife's mother (SOR ¶ 1.b), sister (SOR ¶ 1.c) and brother (SOR ¶ 1.d). Applicant's father-in-law died in 2000. He was a lawyer in the Iraqi Ministry of Finance. (Tr. 29; GE 3 at 26, 31, 33, 37.)

Applicant has weekly contact by phone with his brother, who lives in Baghdad. In his SCA, Applicant reported that his brother rents cars for an Iraqi company. At the hearing, Applicant testified that this brother is a civil engineer like himself. Applicant's contact with his brother's wife, who is a housewife, is limited to monthly calls. Applicant's mother-in-law is a retired elementary school teacher, who worked for the Iraqi Ministry of Education. He has weekly contact with her by phone. Applicant's sister-in-law works for a foreign airline in Iraq. In his SCA, Applicant also reported that he has weekly contact with her by phone. He testified at the hearing that he only speaks with her every two or three months. Applicant's wife has a very close relationship with this sister. The brother of Applicant's wife works as a lawyer in the Law Department of the Iraqi Media Network, a government agency. According to his SCA, Applicant has weekly contact with him, though Applicant's wife speaks with her brother more often. At the hearing, Applicant testified that he only speaks with his brother-in-law every two or three months. Applicant also visits each of these relatives when he travels to Iraq, which he has done in 2006 (two times), 2007 (one time), 2008 (four times), 2009 (one time), 2015 (one time), and 2016 (one time). He did not travel to Iraq between 2009 and 2015 because of the requirements to obtain U.S. citizenship. He travels on his Iraqi passport because he believes it is dangerous to be identified as a U.S. citizen. He renewed his Iraqi passport when he was in Iraq in 2016. (Tr. 19-20, 22-26; GE 2 at 4, 6-8; GE 3 at 16-23, 26, 31, 33, 37.)

The SOR also alleges that Applicant has a friend who is citizen and resident of Egypt (SOR ¶ 1.e). Applicant met this foreign national while he was living in Egypt from 2005 to 2009. The friend is a “respectable businessman.” Applicant has traveled to Egypt in 2014 (one time), 2015 (seven times), 2016 (two times), and 2017 (one time). In addition, he has traveled to the United Arab Emirates on five occasions during the 2015-2017 period. He notes in his SCA that all of his travel to Egypt and Iraq was to “visit family or friends,” and his repeated travel to the United Arab Emirates was for “tourism.” (SOR response at 1.)

Applicant owns his home, but he has exhausted his savings and has limited funds and no retirement accounts. He has been unemployed since 2017. He has been offered employment in Iraq as a linguist. He seeks a security clearance in connection with that employment offer. (Tr. 8-9, 12, 18; GE 3 at 5.)

## **IRAQ**

The U.S. Department of State warns that U.S. citizens in Iraq remain at high risk for kidnapping and terrorist violence and advises them to avoid all travel to Iraq. The ability of the U.S. Embassy to provide consular services to U.S. citizens outside of Baghdad is extremely limited given the security environment. ISIS controls or is present, directly or through affiliates, in portions of Iraq’s territory. Within areas under ISIS control, the Iraqi government has little or no ability to control and ensure public safety.

Numerous terrorist and insurgent groups are active in Iraq, including ISIS. Such groups regularly attack both Iraqi security forces and civilians. Anti-U.S. sectarian militias may also threaten U.S. citizens and western companies throughout Iraq. U.S. Government and western interests remain possible targets for attacks. The U.S. Government considers the potential personal security threats to U.S. Government personnel in Iraq to be serious enough to require them to live and work under strict security guidelines.

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

## **Policies**

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an

individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the 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.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. 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. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-

20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

## Analysis

### Guideline B, Foreign Influence

The security concern under this guideline is set out in AG ¶ 6:

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.

As to Applicant’s relatives in Iraq, his admissions in his SOR response and at the hearing and the documentary evidence in the record establish the following potentially disqualifying conditions under this guideline:

AG ¶ 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;

AG ¶ 7(b): connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; and

AG ¶ 7(e): shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

AG ¶¶ 7(a) and 7(e) require evidence of a “heightened risk.” The “heightened risk” necessary to raise these disqualifying conditions is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. The totality of Applicant’s family ties to a foreign country as well as each individual family tie must be considered.

Applicant's brother, his brother's wife, his mother-in-law, and his brother and sister-in-law are citizens and residents of Iraq. Applicant and his wife have ties of affection to each of them. He maintains regular contact with these relatives, as does his wife with her immediate family and the spouses of her siblings. Applicant's family residing in Iraq creates a heightened risk and a potential foreign influence concern.

The U.S. Department of State warns U.S. citizens against travel to Iraq because of continued instability and threats by terrorist organizations against U.S. citizens. It also has serious concerns about terrorist activities in Iraq that specifically target Americans. There are widely documented safety issues for residents of Iraq because of terrorists and insurgents. A number of years ago, Applicant supported the U.S. Army through his work as an engineer, but had to flee the country out of fear for his safety. Now he is willing to return to Iraq and work for the U.S. Army again, this time as a linguist. Thousands of the U.S. and coalition armed forces and civilian contractors serving in Iraq are targets of terrorists, along with Iraqi civilians, who support the Iraq Government and cooperate with coalition forces.

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

The nature of a nation's government, its relationship with the United States, and its human-rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government; the government ignores the rule of law including widely accepted civil liberties; a family member is associated with or dependent upon the government; the government is engaged in a counterinsurgency actions; terrorists cause a substantial amount of death or property damage; or the country is known to conduct intelligence collection operations against the United States. The relationship of Iraq with the United States, and the situation in Iraq place a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationships with his family members living in Iraq do not pose a security risk. Applicant, however, should not be placed a position where he might be forced to choose between his loyalty to the United States and a desire to assist a relative living in Iraq.

While there is no evidence that intelligence operatives or terrorists from Iraq seek or have sought classified or economic information from or through Applicant or his family, nevertheless, it is not prudent to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Iraq has an enormous problem with terrorism. Applicant's relationships with relatives living in Iraq create a potential conflict of interest because terrorists could place pressure on his family living there in an effort to cause Applicant to compromise classified information. These relationships create "a heightened risk of

foreign inducement, manipulation, pressure, or coercion” under AG ¶ 7. Substantial evidence was produced of Applicant’s contacts with family in Iraq and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), and 7(e) apply to SOR ¶¶ 1.a through 1.d.

The Government did not pursue an argument for disqualification under SOR ¶ 1.e regarding Applicant’s Egyptian friend. In the absence of evidence of a heightened risk or a conflict of interest with respect to this friend, neither AG ¶¶ 7(a) nor 7(b) has been established.

The following mitigating conditions are potentially applicable:

AG ¶ 8(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 United States;

AG ¶ 8(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

AG ¶ 8(c): contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Applicant has not established mitigation under AG ¶ 8(a). The nature of his relationships with Iraqi relatives, as alleged in the SOR, and the country in which they reside, preclude a conclusion that it is unlikely that Applicant will be placed in a position of having to choose between the interests of his Iraqi relatives and the interests of the United States.

Similarly, mitigation under AG ¶ 8(b) has not been established. The record evidence demonstrates that Applicant’s sense of loyalty and obligation to his Iraqi relatives, including his wife’s relatives, is quite strong. He has frequently traveled to Iraq to visit them, despite the fact that he feared for his life and fled Iraq, first to Egypt, and then to the United States as a refugee. Also, he frequently communicates with these relatives by telephone. His loyalty and sense of obligation to these persons is hardly “minimal.” In fairness, Applicant also has a significant relationship with the United States. His parents, several siblings, wife, and children are citizens and residents of the United States. In 2003 to 2005, he also served the U.S Army admirably and with significant risk through his Iraqi engineering company. Applicant has only resided in the United States



since 2009, however, and has only been a U.S. citizen since 2014. His U.S. assets are basically limited to the equity he has in his residence. During the past ten years, he has frequently travelled abroad to visit family and friends. It cannot be concluded that Applicant's relationships and loyalties in the United States are so deep and longstanding that he can be expected to resolve any conflict of interest in favor of the U.S. interest.

AG ¶ 8(c) is not established with respect to the Iraqi relatives alleged in the SOR. Applicant's contacts and communications with these relatives is not casual or infrequent so as to create little likelihood that those relationships could create a risk of foreign influence or exploitation.

### **Whole-Person Analysis**

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. In applying the whole-person concept, an 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 and applying the adjudicative factors in AG ¶ 2(d). These factors are:

- (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.

As a refugee, Applicant has a unique connection to the United States compared to most U.S. citizens. He has also served the U.S. Army in helping to rebuild Iraq. Nevertheless, the presence in Iraq of his brother with whom he is close, and his wife's relatives, with whom she is close and to whom he is obligated as his wife's family members, creates a potentially difficult conflict of interest and a heightened risk of pressure, coercion, exploitation, or duress.

After weighing the disqualifying and mitigating conditions under Guideline B and evaluating all of the evidence in the context of the whole person, I conclude Applicant has failed to mitigate the security concerns raised by his multiple contacts and connections with Iraqi citizens and residents.

### **Formal Findings**

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a-1.d:	Against Applicant
Subparagraph 1.e:	For Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national interests of the United States to grant Applicant's eligibility for access to classified information. Clearance is denied.

John Bayard Glendon  
Administrative Judge