



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



In the matter of:)
)
) ISCR Case No. 18-01565
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: Kris Poppe, Esq.

12/18/2018

Decision

KILMARTIN, Robert J., Administrative Judge:

Applicant failed to mitigate the criminal conduct and personal conduct security concerns, but he did mitigate the foreign influence security concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 28, 2017. On July 20, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence, Guideline J, criminal conduct, and Guideline E, personal conduct. The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AGs) implemented by DOD on June 8, 2017.

Applicant obtained counsel and answered the SOR on August 15, 2018, admitting all of the SOR allegations under Guideline B, foreign influence, and Guideline J, criminal conduct. He denied the two SOR allegations of falsification under Guideline E at SOR ¶ 3.b and ¶ 3.c. Applicant also requested a hearing before an administrative judge. The case was assigned to me on October 15, 2018. The Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for November 6, 2018. I convened the hearing as scheduled.

Government Exhibits (GE) 1 - 12 were admitted into evidence without objection. At the hearing, Applicant testified, and he submitted Applicant's Exhibits (AE) A – N, which were admitted without objection. DOHA received the transcript (Tr.) on November 15, 2018.

Procedural Ruling

Department Counsel submitted formal requests that I take administrative notice of certain facts relating to Iraq and Turkey. Applicant did not object and the requests were approved. The requests concerning Iraq and Turkey and attached supporting documents were not admitted into evidence but were included in the record as Hearing Exhibits (HE) 1 and 2. Some of the facts administratively noticed are set out in the Findings of Fact below.

Request for Administrative Notice - Iraq

The request listed supporting documents to show detail and context for those facts. AG ¶ 6, Foreign Influence, provides, "Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism." A risk assessment in this case necessitates administrative notice of facts concerning Iraq.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *ADMINISTRATIVE LAW*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

Applicant did not object, and I have taken administrative notice of the facts contained in the HE 1 source documents, and incorporated them by reference. The facts are summarized in the written request and will not be repeated in this decision. However, of particular note, are the following salient facts from HE 1:

Iraq is a constitutional parliamentary republic. The U.S. State Department warns that U.S. citizens traveling in Iraq remain at high risk for kidnapping and terrorist violence and to avoid all but essential travel to Iraq. The Islamic State of Iraq and the Levant (ISIL) controls a significant portion of Iraq's territory. Within areas under ISIL control, the Iraq government has little or no ability to exercise control and ensure public safety. Kidnappings and attacks by improvised explosive devices (IED's) occur frequently in many areas of the country, including Baghdad. Such attacks often take place in public venues such as cafes and markets.

Anti-U.S. sectarian militias threaten U.S. citizens and Western companies throughout Iraq. Iraq witnessed a continuing surge of terrorist activity in 2016, primarily as a result of the actions of ISIL. Although the government of Iraq has made significant progress in its campaign to retake occupied territory from ISIL, there remains a security vacuum in parts of Iraq. The U.S. State Department has also reported that ISIL committed the overwhelming number of significant human rights abuses, including attacks against civilians, especially Shia but also Sunnis who opposed ISIL, and women and children. ISIL members committed acts of violence on a mass scale, including killings by suicide bombings, IED's, execution-style shootings, public beheadings, and other forms of execution. Sectarian hostility, widespread corruption, and lack of transparency at all levels, weakened the Iraq government's authority and worsened effective human rights protections.

Request for Administrative Notice - Turkey

The request listed supporting documents to show detail and context for those facts. A risk assessment in this case necessitates administrative notice of facts concerning Turkey.

Applicant did not object, and I have taken administrative notice of the facts contained in the HE 2 source documents, and incorporated them by reference. The facts are summarized in the written request and will not be repeated in this decision. However, of particular note, are the following salient facts from HE 2:

Notwithstanding the long strategic U.S. – Turkey relationship, current country conditions are problematic. The U.S. State Department urges citizens to avoid travel to Turkey due to terrorism and arbitrary detentions. Terrorist groups explicitly target Western tourists and expatriates for kidnapping and assassination. The potential for terrorist attacks in Turkey, including against U.S. citizens and interests, remains high. The U.S. Government does not allow family members to accompany personnel assigned to the U.S. Consulate in Adana, unless they are working in the Consulate. Turkey is a transit country for foreign terrorist fighters wishing to join the Islamic State of Iraq and Syria (ISIS) and other terrorist groups fighting in Syria and Iraq. Since a July 2016 coup attempt, the Turkish Government has operated under a state of emergency, with far reaching effects on the country's society and institutions, restricting the exercise of many fundamental freedoms. Profound and significant human rights abuses persist.

Findings of Fact¹

Applicant is 37 years old and single. He reports no children. He was born in Baghdad, Iraq and he served as a linguist for a federal contractor attached to armed forces of the United States from 2003 to 2009. (GE 1, Tr. 15, 35) He went on more than 1,000 combat patrols. (Tr. 86) Applicant has one brother, age 30, who served as a linguist in support of U.S. Marines in Iraq for five years. (Tr. 36) He also has three sisters still living in different cities in Iraq with their husbands and families. Their ages are 31, 39, and 42. Applicant's parents moved from Iraq to Syria in 2005 and remained for three years. (Tr. 38-39) Next, they moved to Turkey due to the instability in Syria. Applicant moved to the U.S. in 2009 on a special immigrant visa program and he was naturalized in 2014. (Tr. 15)

Applicant's mother served in the Ministry of Education in Iraq for 22 years, and his father retired from the Iraqi Army as a major in 1989-'90, after more than 20 years of service. (Tr. 30-31) Applicant provided financial support of \$250, once a month from 2010-2016, to his parents for such things as medical bills. (Tr. 39) They are refugees residing in Turkey. Applicant has telephonic contact with his parents once or twice a week. (Tr. 40-41) Applicant has filed an application with the Embassy in Turkey to try to move them to the U.S. on a visa. His brother tutors school children in Iraq. They last had contact more than three years ago. (Tr. 43) Applicant's two oldest sisters are teachers in Iraq and his youngest sister never worked. (Tr. 44) In addition to providing financial support to his parents, as needed, Applicant gave his youngest sister \$900 to help her buy a car. (Tr. 45) His telephonic contact with his sisters varies from once every two weeks to once a month. He has no property in Iraq, and held a bank account there briefly from 2008-2009. (Tr. 89)

Applicant submitted a security clearance application (SCA) on February 28, 2017.² In section 22 (Police Record) of his SCA, he answered "no" to all questions about being issued any summons, citations, tickets to appear in court in a criminal proceeding etc. Applicant failed to disclose the civil summons, 4 criminal summonses, 25 citations and 18 traffic warnings that he received between November 2010 and September 2016. (GE 4-11) He admitted all of these traffic violations in his Answer. Applicant submitted AE A, an updated state division of motor vehicles driving record, to show that he has not had any vehicle violations since 2015. Applicant testified credibly that he may have misinterpreted the questions in this section of the SCA but since all of his citations involved fines of less than \$300, he was not required to report them. (Tr. 82) Since all of the charges against him alleged in SOR ¶¶ 2.a-2.e were dismissed and Applicant served no community service, paid no fines, and had no consequences, he misunderstood and believed he did not have to report these in his SCA. (Tr. 83) To corroborate his testimony on this point, he did disclose his arrest for domestic violence

¹ Unless otherwise stated, the basis for these findings of fact is Applicant's Questionnaire for National Security Positions (SCA) dated February 28, 2017 (GE 1) and the summaries of personal subject interviews conducted on July 27, 2017, and December 8, 2017. (GE 2)

² GE 1.

in 2015 (SOR ¶ 2.a) and protective order against him, as well as the arrest for communicating threats in 2016, to the clearance investigator in his December 8, 2017 clearance interview. (GE 2, Tr. 117) He disclosed this offense because it is the only one where he went to trial.

In September 2011, Applicant lived with his girlfriend. They had a disagreement and when he tried to move out, she gave him only half of his personal property. (Tr. 58) She tried to shove him out the door and he allegedly pushed her. The judge dismissed this complaint at SOR ¶ 2.a. (Tr. 58) In SOR ¶ 2.b, Applicant lent \$250 to a female co-worker who was in financial distress in January 2015. He asked her for a check to secure this loan, which he would only cash after she became solvent. (Tr. 60-63) When he later tried to cash the check, he found that there were insufficient funds in her account and confronted her. She tried to snatch the cold check out of his hand and called police. He was charged with trespassing and the judge summarily dismissed that complaint and had her arrested for uttering a false instrument. (Tr. 63) In August 2015, a mentally ill neighbor alleged that Applicant committed simple assault, but promptly dropped the charges. (GE 6, Tr. 63) Again, Applicant was arrested for communicating threats against a former business partner in March 2016, as alleged in SOR ¶ 1.e, and that charge was dismissed by the judge on May 16, 2016. (GE 8)

Applicant obtained his commercial driver's license (CDL) and operated a transportation company from 2013-2017. (Tr. 52) He received numerous citations for driving infractions during that period. (Tr. 55) Applicant testified that he started driving in Iraq when he was 14 years old, and he was accustomed to driving unimpeded by restrictions on speed, and rules and regulations. (Tr. 75) He had difficulty assimilating to the rules of the road and driving laws when he moved to the U.S. at age 28. Although he studied a safe driving booklet, passed a written exam, and took a state road test to obtain his state driver's license in 2009, he had a habit of speeding. (GE 9, 10, 11, Tr. 77)

Applicant testified credibly that despite his astonishing number of driving offenses, his state license was never suspended, and it is still valid. (Tr. 80, AE A) Instead, he would routinely hire an attorney who would go into state court and get the driving offense reduced to improper equipment (odometer), and pay a fine – 25 times. (Tr. 79) Despite this ruse, Applicant was aware that the problem was not a defective odometer. (Tr. 123) Applicant admitted that he took too long to change his driving habits, but he did so. (Tr. 79) He was recently issued a warning in 2018 because he was driving his girlfriend's car, which had an improperly displayed license plate. (Tr. 96)

Applicant was involved in a civil dispute with one of his former employee-truck drivers, after that driver abandoned one of his trucks and left it unattended. (Tr. 12, GE 7) He was charged with simple assault on the other CDL driver in August 2015 at SOR ¶ 2.d. The state court judge dismissed this criminal complaint against Applicant on September 28, 2015. (GE 7) Then, a civil action ensued between Applicant and the same driver for \$4,500 that Applicant loaned the driver. It was resolved for \$4,500 in Applicant's favor. (Tr. 72) Applicant reasonably stated that he had no reason to report this civil action in his favor, in his SCA, and he did not intend to falsify that form or

deceive the government as alleged in SOR ¶ 3.c because this is all a matter of public court records. (Tr. 114, 118, GE 7,12)

Applicant submitted AE B–K, which are character reference letters, and AE L-N, which are certificates of appreciation for his service as a linguist on behalf of U.S. Armed Forces. Notably, he served coalition forces with bravery and distinction since 2006. An Army Brigadier General stated “service of local national translators who risk their safety, and that of their families, to support the mission and U.S. soldiers, is invaluable.” (AE B) Applicant was first employed by the U.S. military as a general laborer in 2004 in Iraq. Then, he served in direct support of combat units including the 82nd Airborne Division, and 2nd and 3rd Brigade Combat Teams, 4th Infantry Division, as an Arabic translator. He performed so well that he was added to Army civil action teams in 2008. (AE C-N)

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 to be 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, administrative judges apply the guidelines 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(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant 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 the applicant may deliberately or inadvertently fail to safeguard

classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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

The security concern for foreign influence 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 that is 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, such considerations as whether the foreign country is known to target United States citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable 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.

Applicant’s parents are living in Turkey, but applied for visas to immigrate to the U.S. His brother and sisters are citizens and residents of Iraq. He provides occasional financial support to his parents as a dutiful son. Applicant’s foreign contacts create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, both directly and through his family members. AG ¶¶ 7(a) and 7(b) are implicated by the evidence. Accordingly, Applicant’s relationship

with his parents and siblings, who are citizens and residents of Turkey and Iraq, creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

Conditions that could potentially mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(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; and

(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 U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

Applicant has demonstrated a long-standing preference for working and living in the U.S. He served in harm's way as a linguist for over six years and endured over 1,000 patrols with U.S. Armed Forces. He was hired as a linguist precisely because of his Arabic language skills that are indigenous to people who were born and raised and have family in Iraq. He has the background, upbringing, and understanding of Iraqi culture that is invaluable. Although he is presumed to have strong bonds of affection with his parents and siblings in Turkey and Iraq, these bonds are not sufficient to offset or overcome his demonstrated, long-term commitment to the U.S. and self-abnegation in its service under dangerous conditions.³

I considered the totality of Applicant's foreign contacts and interests. 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.⁴

The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. Furthermore, friendly nations can have profound disagreements with the U.S. over

³ The Appeal Board has held that "an Applicant's proven record of action in defense of the United States is very important and can lead to a favorable result for an Applicant in a Guideline B case." ISCR Case 04-02511 at 4 (App. Bd. March 20, 2007).

⁴ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

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. The nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing whether an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the U.S., or the foreign country is associated with a risk of terrorism.

Applicant parents are Iraqi citizens residing in Turkey, and his siblings are citizens and residents of Iraq, which is an unstable regime. His contact with them is infrequent by telephone. There is no indication that they are affiliated with the Iraqi government or intelligence services. Applicant's foreign family members do not pose an unacceptable security risk. There is sufficient evidence to conclude that Applicant would report contacts with his relatives by foreign intelligence agents, and that he has a long-term commitment to the U.S. All of the mitigating conditions in AG ¶ 8 are applicable to the contacts with family members, which are alleged in SOR ¶¶ 1.a–1.b.

Guideline J, Criminal Conduct

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 31 lists conditions that could raise a security concern and may be disqualifying including:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability or trustworthiness; and
- (b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Applicant admitted to 25 traffic citations, and 18 warnings between 2010 and 2016. However, traffic violations generally don't rise to the level of criminality. Although he repeatedly violated state traffic regulations and admits that it took too long for him to alter his behavior, there is no evidence of criminality. This same aberrant behavior is properly cross-alleged in SOR ¶ 3.a. The criminal summonses issued against Applicant alleged in SOR ¶¶ 2.a – 2.e were all dismissed or resolved in his favor. Thus, AG ¶¶ 31(a) and (b) do not apply.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following normally will result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(a) deliberate omission, concealment or falsification of relevant facts from any personnel security questionnaire, personal history statement or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the

individual may not properly safeguard classified information. This includes but is not limited to, considerations of:

(3) a pattern of dishonesty or rule violations.

Applicant did not disclose his extraordinary involvement and frequent interaction with authorities in law enforcement and the U.S. judicial system over the last decade in his SCA. He has a well-established pattern of speeding and failure to comply with traffic rules and regulations. AG ¶¶ 16(a) (c) and (d) are implicated and the focus shifts to a determination of which, if any of the mitigating conditions apply.

17. Conditions that could potentially mitigate security concerns include:

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

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant's traffic violations were frequent and numerous. His last offense occurred in 2018 when he was driving his girlfriend's vehicle, and received a warning because the vehicle lacked a proper license plate. It is premature to conclude that his aberrant driving behavior is unlikely to recur. Thus, the cross-alleged 25 citations and 18 warnings at SOR ¶ 3.a, while not rising to criminality, do support a whole-person assessment of unwillingness to comply with rules and regulations. This allegation, insofar as it cross-alleges driving offenses improperly alleged under Guideline J, at SOR ¶¶ 2.f – 2.h, is not mitigated here under Guideline E. The sheer number of repeated driving offenses, when combined with all available information, raises concerns about Applicant's judgment, trustworthiness, and reliability.

Applicant misunderstood the questions in the SCA in section 28 about being a party to any civil court actions in the last 10 years. He testified credibly that he was the successful plaintiff in a civil dispute and multiple summonses were dismissed against him. His contention that he felt no reason to disclose these matters of public record, in his SCA, is not unreasonable. He naturally assumed that since his extensive list of infractions all involved fines of less than \$300 he did not have to report these on his SCA. I find that he did not have the specific intent to deliberately deceive the government or falsify his SCA. His failures to disclose these infractions and civil disputes as alleged in SOR ¶¶ 3.c and 3.d, have no national security significance or concern.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B, E, and J in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline. Applicant is 37 years old. He submitted character references from his supervisors attesting to his allegiance to the U.S. Virtually all of his adult work life was spent in Iraq supporting U.S. interests. However, he is still in the process of assimilating successfully into his new country, and learning to comply with driving laws.

Overall, the record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has mitigated foreign influence security concerns, and criminal conduct security concerns, but not personal conduct security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a-1.c:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT

Subparagraphs 2.a-2.h:	For Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a	Against Applicant
Subparagraphs 3.b-3.c:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert J. Kilmartin
Administrative Judge