



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



In the matter of:)
)
) ISCR Case No. 18-02021
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: Michael Balaban, Esq.

07/18/2019

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the security concerns under Guideline B, foreign influence. Guideline E, personal conduct concerns were not established. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On January 9, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines B and E. 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 implemented on June 8, 2017 (AG).

Applicant answered (Ans.) the SOR on February 14, 2019, and requested a hearing before an administrative judge. On April 18, 2019, the case was assigned to

me. On May 15, 2019, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for June 4, 2019. I convened the hearing as scheduled. Government exhibits (GE) 1 through 5 were admitted in evidence without objection. The Government's exhibit list and request for administrative notice were marked as hearing exhibits (HE) I and II. Applicant testified and offered exhibit (AE) A, which was admitted without objection. DOHA received the transcript (Tr.) on June 13, 2019.

Procedural Rulings

I took administrative notice of facts concerning Iraq. Department Counsel provided supporting documents that verify, detail, and provide context for the requested facts. The specific facts noticed are included in the Findings of Fact.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. Usually administrative notice in ISCR proceedings is accorded to facts that are either well known or from U.S. Government reports. (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); Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice))

Findings of Fact

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

Applicant is 57 years old. He was born in Iraq in 1962. He graduated from high school and completed three years of college in Iraq. He immigrated to the United States in 2007. He became a U.S. citizen in 2012. He is employed in the private sector, but is pursuing a linguist position with a federal contractor, for which he is seeking a security clearance. He has been married for 26 years and has three children. His wife and children are U.S. citizens and residents. (Tr. 24, 39, 44; GE 1)

The SOR alleged that Applicant's mother is a citizen of Lebanon and resident of Iraq and that two brothers are residents and citizens of Iraq. The SOR further alleged that Applicant provided financial support to one brother and his mother in Iraq; that he shares ownership of a home in Iraq with his siblings; and that he maintained a bank account in Iraq. The SOR also alleged that Applicant failed to disclose his Iraqi bank account during an official security screening interview on May 11, 2017.

Applicant was hired locally as a linguist from 2005 to 2007 for U.S. forces in Iraq. He provided linguist services supporting the mission of training Iraqi police officers. He worked in hostile areas requiring him to wear a helmet and body armor, and carry a

weapon. In 2007, he and his family immigrated to the United States using a special immigrant visa based upon his work with U.S. forces. In 2008, he was hired by a government contractor to fulfill a linguist position in Iraq. He served in various linguist positions. He worked for both U.S. Marine Corps and U.S. Army units during this time. Once again, he was consistently exposed to hostile areas while performing his duties. In 2011, with the drawdown of U.S. forces in Iraq, Applicant was laid off from his position and returned to the United States. (Tr. 22-24, 31-32, 43-44; GE 1, 3-4)

Applicant was unemployed from 2011 to 2014. He supported his family with savings and his wife's and children's employment. In 2014, he began working in the private sector in the transportation field. Applicant has never traveled back to Iraq for any personal reasons and has no intent to do so in the future. After he gained his citizenship in 2012, he sought a position as a linguist, which required a security clearance. (Tr. 24, 40; GE 4)

The current status of Applicant's relatives listed in the SOR is as follows:

1. Applicant's mother (M). M is 78 years old. She remains a Lebanese citizen and resident of Iraq. She is a housewife and lives in the home she inherited from her husband. She receives a small pension. She has no connection to the Iraqi government. Applicant sent his mother approximately \$1,000 in 2008 or 2009, after his father died. He has not sent her any other funds. Applicant has weekly contact with her using an Internet phone application. He loves his mother, but his most important family members are his wife and three children. (Tr. 26, 41-42, 46-47; GE 4)

2. Applicant's two brothers (B1-B2). Applicant has a third brother who is a citizen and resident of the United States. B1 is a resident alien of Canada, although he currently retains his Iraqi citizenship. His family resides in Canada. He works in the construction industry. Applicant previously had weekly contact with B1, but recently their contact is infrequent because of a dispute among the brothers about the home they inherited from their father (the home where their mother currently lives). B2 is a resident and citizen of Iraq. B2 is self-employed. Applicant previously had monthly contact with B2, but because of the property conflict, he now has sporadic contact with him. Neither B1 nor B2 have any ties to the Iraqi government. He does not have a good relationship with B1 and B2. (Tr. 27-28, 42; Ans.; GE 4)

Applicant loaned B2 \$5,000, which is being repaid. The current debt is approximately \$3,500. Applicant inherited a 20 percent interest in his father's home. Applicant's share of the home could be worth as much as \$100,000. He is willing to forego any interest in this home. He has tried to persuade his brothers into selling the property, but they refuse to do so. Applicant owns a home in the United States where his family lives. He has over \$100,000 worth of equity in the home. He estimated that his net worth in this country is \$300,000. In approximately 1979, Applicant opened a bank account in Iraq. With the wars and inflation over the years, the account lost value resulting in a de minimis amount and Applicant believed the account was closed in the

1990s for not meeting the minimum balance requirement. (Tr. 26, 29-30, 35-37; Ans.; GE 4)

In May 2017, Applicant completed a security screening questionnaire. One of the questions asked whether he had any foreign bank accounts and he answered “no.” Applicant completed a similar screening questionnaire in 2008 and disclosed that he had a bank account in Iraq. He explained the circumstances of this account when he was interviewed later in May 2017 by a defense investigator. Applicant credibly testified that he had no intent to deceive in 2017, and he believed the account had minimal funds and had been closed. (Tr. 30, 37; Ans.; GE 3-5)

Character Evidence.

Applicant supplied character references from two military supervisors associated with his linguist duties from 2008 to 2011. Those supervisors noted that his linguistic skills and other positive character traits, such as honesty and being a team player, made him a valuable asset. Applicant was also recognized by receiving four certificates of appreciation and two training certificates. (AE A)

Administrative Notice.

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. (HE II)

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.

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

AG ¶ 6 explains the security concern about “foreign contacts and interests” as follows:

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;

(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

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

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 and friends 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 and friends 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." (ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004)) 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, his relatives, or his friends 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. AG ¶ 7(f) applies because of Applicant's interest in the family home in Iraq that he acquired from an inheritance. Applicant's Iraqi bank account is of nominal value and not a security concern.

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

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant credibly testified that he has limited contact with his relatives in Iraq. He presented sufficient evidence to establish that it is unlikely that he would be placed in a position to choose between the interest of his relatives living in Iraq and those of the United States. He already has demonstrated that he would put the United States' interests first when he worked as a linguist from 2005 to 2007 and from 2008 to 2011, while his family members were living in Iraq. AG ¶ 8(a) applies.

Applicant has met his burden to establish his "deep and longstanding relationships and loyalties in the U.S." He worked as a linguist from 2005 to 2007 and again from 2008 to 2011, performing different missions for U.S. forces where he earned praise for his service while in harm's way. He became a U.S. citizen in 2012. He currently works and lives in the United States with his wife and three children. They own property in this country and have other substantial assets here. The evidence supports 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.

Applicant's financial interests in this country are much more substantial than his interests in Iraq. He has no intention of claiming his interest in the property, unless it is sold and the proceeds distributed among all the heirs. However, his brothers are not amenable to a sale. AG ¶ 8(f) applies.

Guideline E, Personal Conduct

AG ¶ 15 expresses the personal conduct security 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying in this case. The following disqualifying condition is 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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant provided information about his Iraqi bank account in 2008. When he was asked about it again in May 2017 he did not think of it as an active account, which is why he neglected to list it on the form. He credibly testified that he had no intent to deceive by failing to disclose this information. Additionally, since the account has a de minimis balance, it does not present a material security concern. AG ¶ 16(a) has not been established.

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(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. The circumstances tending to support granting Applicant's clearance are more significant than the factors weighing towards denying his clearance. I considered the comments by Applicant's U.S. military supervisors, who attested to his dedication and commitment to U.S. forces. I also considered his strong ties to this country as a linguist serving in harm's way while assisting U.S forces. 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, were mitigated and that no disqualifying conditions were established under Guideline E.

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.f:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

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

Robert E. Coacher
Administrative Judge