



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



In the matter of: )  
 )  
 --- ) ISCR Case No. 18-02123  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: *Pro se*

04/19/2019

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**Decision**

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GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding foreign influence. Eligibility for a security clearance and access to classified information is granted.

**Statement of the Case**

On August 1, 2017, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).<sup>1</sup> The Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him on October 9, 2018, under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016) (AG), for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position, effective June 8, 2017.

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<sup>1</sup> Item 3 (SF 86, dated March 7, 2014).

The SOR alleged security concerns under Guideline B (Foreign Influence) and detailed reasons why DOD was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The DOD adjudicators recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on October 26, 2018. In a sworn statement prepared with the assistance of his attorney, dated November 12, 2018, Applicant responded to the SOR and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on December 26, 2018. On January 2, 2019, Applicant was furnished a copy of the Directive as well as the Pre-hearing Guidance, and he was advised that his case would be scheduled for a hearing. On January 3, 2019, Applicant responded and indicated that he was currently deployed to Iraq; he was no longer represented by an attorney; and that he would not be available for a hearing until early 2020. Accordingly, he withdrew his request for a hearing and elected to have his case decided on the written record in lieu of a hearing. He confirmed his request on January 14, 2019.

A complete copy of the Government's file of relevant material (FORM) was provided to Applicant on January 15, 2019, and he was afforded an opportunity, within 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Guidelines applicable to his case. Applicant received the FORM on February 12, 2019, signing receipts on that day and on February 18, 2019. A response was due by March 20, 2019. Applicant timely submitted a statement to the FORM which was marked and admitted as Applicant Exhibit (AE G), and it was added to the materials that had been attached to his Answer to the SOR, and marked and admitted as AE A through AE F. The case was initially assigned to another administrative judge on January 11, 2019, but was reassigned to me on March 26, 2019.

### **Rulings on Procedure**

Department Counsel requested that I take administrative notice of certain enumerated facts pertaining to the Federal Republic of Iraq (Iraq), appearing in 11 U.S. Government publications that were published by the U.S. Department of State, the U.S. Department of Homeland Security, and the U.S. Director of National Intelligence, as well as two citations to public law, on the Internet, but no hard copy of any of those publications was furnished. Facts are proper for administrative notice when they are easily verifiable by an authorized source and relevant and material to the case.

After weighing the reliability of the source documentation and assessing the relevancy and materiality of the facts proposed by the Government, pursuant to Rule 201, *Federal Rules of Evidence*, I take administrative notice of certain facts,<sup>2</sup> as set forth below under the Iraq subsection.

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<sup>2</sup> Administrative or official notice is the appropriate type of notice used for administrative proceedings. See *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986); ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct.

## Findings of Fact

In his Answer to the SOR, Applicant admitted, with comments, all but one of the factual allegations pertaining to foreign influence (§§ 1.a. through 1.c., and 1.e.). Applicant's admissions and comments are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 59-year-old employee of defense contractor (A), serving as a linguist, currently deployed to Iraq until the end of 2019. He initially served as a linguist with the U.S. Army in Iraq, training at the Iraqi Police Academy through defense contractor (B) and other unidentified contractors with the U.S. Army in Iraq from July 2006 until December 2008. He subsequently joined defense contractor (B) again in the United States in July 2017, where he remained employed until sometime after he was interviewed by an investigator with the U.S. Office of Personnel Management (OPM) in late August 2017, at which time he joined defense contractor (A). All of Applicant's formal education, including elementary, high school, and college, was received in Iraq. He received a bachelor's degree in 1984. In 1985, during the Iran-Iraq War, Applicant was drafted into the Iraqi Army for the required compulsory military service. Although he was wounded in combat in 1987, he remained on active duty in a non-combat role until he was medically discharged as a 1<sup>st</sup> lieutenant in 1992. He has never served as a member of the U.S. military. He has never been granted a security clearance.

As a linguist, in 2008, Applicant emigrated from Iraq to the United States under the Special Immigrant Visa for Iraqi Translators Program. He became a naturalized U.S. citizen in 2014.<sup>3</sup> In his e-QIP, Applicant stated that he had renounced his Iraqi citizenship:<sup>4</sup>

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12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)). The most common basis for administrative notice at ISCR proceedings, is to notice 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). Requests for administrative notice may utilize authoritative information or sources from the internet. See, e.g. *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006) (citing internet sources for numerous documents). In this instance, although Department Counsel has selected only certain facts appearing in the identified publications, I have not limited myself to only those facts, but have considered the publications in their entirety.

<sup>3</sup> The oath of citizenship is as follows:

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the Armed Forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God.

<https://www.uscis.gov/us-citizenship/naturalization-test/naturalization-oath-allegiance-united-states-america>

I willingly renounce any and all allegiance to previous country of citizenship, surrender my active/expired passport(s) and pledge my loyalty exclusively to the United States of America. I take these actions to demonstrate my loyalty to the United States and my responsibility to protect sensitive information and those sensitive circumstances that I may encounter as I carry out my duties and responsibilities to the United States of America.

Applicant was married in 1988. In 2009, Applicant's wife and their children joined Applicant in the United States. He and his wife, a naturalized U.S. citizen, have three children: his oldest daughter, born in 1990, is in her second year of medical school at a U.S. university, and is a naturalized U.S. citizen; his son, born in 1991, graduated from a U.S. university with an engineering degree, and works for a municipal utility in the United States, and is a U.S. Green Card holder;<sup>5</sup> and his youngest daughter graduates this year as a civil engineer and geologist from a U.S. university, and is a naturalized U.S. citizen.

### **Foreign Influence<sup>6</sup>**

As noted above, Applicant was born, raised, educated, and worked in Iraq. His father, now deceased, was an Iraqi-born clerk, and his mother, also deceased, was an Iraqi-born housewife. They had six children, including Applicant. Applicant's three, as opposed to the alleged four, brothers are Iraqi-born citizens and residents. One brother is a self-employed steelworker; one is an accountant with the Iraqi Government; and the other is a retired enlisted man with the Iraq military. Applicant's two sisters are also Iraqi-born citizens and residents. One is a teacher and the other is a housewife. None of Applicant's siblings was ever associated with the Iraqi intelligence service. As of August 2017, Applicant's contacts with his siblings varied. He generally spoke to his sisters by telephone on a monthly to quarterly basis. He last spoke to one brother in May 2018, but had not had any contact with his other two brothers in about a year. In early 2018, Applicant's relationship with his brothers became strained following a falling out when they demanded Applicant's financial support, something Applicant declined. As a result, he cut all ties with them.<sup>7</sup> Two of Applicant's brothers are married to Iraqi-born wives, both of whom are teachers. Applicant initially spoke with them when he spoke with his brothers, but communication with them now is much more limited.

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<sup>4</sup> Item 2 (e-QIP, dated August 1, 2017), at 8-9.

<sup>5</sup> A Green Card holder (permanent resident) is someone who has been granted authorization to live and work in the United States on a permanent basis. As proof of that status, U.S. Citizenship and Immigration Services (USCIS) grants a person a permanent resident card, commonly called a "Green Card."

<sup>6</sup> General source information pertaining to the foreign influence issues discussed below can be found in the following exhibits: Item 2, *supra* note 3; Item 3 (Enhanced Subject Interview, dated August 24, 2017); Item 4 (Developed Relatives and Associates, dated August 7, 2017); Item 1 (Answer to the SOR, dated November 12, 2018); AE C (Statement, undated); AE E (Sales Contract, dated February 20, 2018); AE F (Typewritten format of Item 4).

<sup>7</sup> Response to the FORM, undated.

After Applicant completed his military service, and started receiving a monthly military pension of approximately \$320, he worked in a number of different entrepreneurial jobs ranging from driving a taxi, selling hand-woven rugs, to running a chicken farm. By the mid-1990s, he managed to save enough money to purchase a house in Iraq for approximately \$4,000. After the United States invaded Iraq, his military-subsidized chicken-farm income plummeted with the collapse of the Iraqi Army, so Applicant searched for another job. He finally obtained a position as an interpreter for the U.S. military, initially out of desperation to make money despite the dangerous nature of the job. Because it was considered an extremely dangerous job, Applicant had to keep his job a secret from all but his closest family members. Applicant described his experience as follows:<sup>8</sup>

. . . as I got to know the fine men and women of our military, it became a calling. I was inspired by their dedication for their country and their desire to do good. They served their country with honor and deserved all the admiration that I could give them.

Upon immigrating to the United States, Applicant briefly resided first with a former U.S. colleague in Baghdad – and then with the family who had been sponsoring Applicant’s son as an exchange student. He went back to Iraq briefly in 2009, and returned to the United States with his wife and other children. He rented his house in Iraq to family members for \$400 per month. He went through periods of unemployment in the United States, and he eventually became a taxi driver, before being able to, once again, become a linguist. The rental money and his military pension provided some continuing income for him that was sufficient for him to place a down payment for the family residence in the United States. Applicant sold his Iraqi house for approximately 183,000,000 Iraqi Dinars in February 2018, and he used the funds to pay off his mortgage on his residence in the United States.<sup>9</sup> When he severed all ties with his brothers, his military pension, which had been obtained on his behalf by one of his brothers, stopped being sent to him.<sup>10</sup> Applicant no longer has any financial interests in, or coming from, Iraq.

Applicant’s relationship with the United States was expressed, as follows:<sup>11</sup>

The United States took me and my family in, gave us safety, opportunity, and the greatest honor of citizenship. I feel very proud every day as I look at my children and how their country gave them the opportunity to prosper. . . . Seeing them grow, prosper, and journey successfully towards their American dream make me proud to be an American. My allegiance for my country is paramount and unwavering.

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<sup>8</sup> AE C, *supra* note 6.

<sup>9</sup> AE E, *supra* note 6; Response to the FORM, *supra* note 7.

<sup>10</sup> Response to the FORM, *supra* note 7.

<sup>11</sup> AE C, *supra* note 6.

He subsequently added:<sup>12</sup>

. . . . I would like to mention that I understand I left behind blood relatives in Iraq, however, the only people I care about are with me in [the United States] not in Iraq. When I took the citizenship oath, I swore an unwavering allegiance to the United States, and this will not change under any circumstances.

## **Iraq**

Iraq is a constitutional parliamentary republic. The outcome of the 2014 parliamentary elections generally met international standards of free and fair elections and led to the peaceful transition of power from former Prime Minister Nuri al-Maliki to Prime Minister Haider al-Abadi.

In August 1990, Iraq invaded neighboring Kuwait and declared its annexation into Iraq. Despite United Nations (UN) disapproval of the action, Iraq refused to withdraw from Kuwait. In January 1991, a coalition of nations, led by the United States, launched military operations against Iraq, called Operation Desert Storm. The Iraqi Army was crushed. No-fly zones were established in Iraq, banning Iraq from using all aircraft in the designated no-fly zones. After several years of Iraqi non-compliance with established UN resolutions and requirements, in March 2003, the United States and another coalition of nations launched another assault on Iraq, called Operation Iraqi Freedom. Some military operations ceased in May 2003, and a provisional government under a governing council and an American Chief Civilian Administrator was established to decide all Iraqi affairs. Over the ensuing years, hostilities and terrorism continued, and U.S. military operations increased. In 2003, outlawed mid-level and lower level officials of the Ba'ath Party were permitted to return to their previous posts. By late 2010, over 90,000 U.S. troops were withdrawn from Iraq, leaving only a transitional military force to advise and assist security forces, counterterrorism missions, and protect U.S. civilians.

The U.S. Mission in Iraq remains dedicated to building a strategic partnership with Iraq and the Iraqi people. The December 2011 departure of U.S. troops from Iraq marked a milestone in our relationship as Iraq continues to develop as a sovereign, stable, and self-reliant country. Iraq is now a key partner for the U.S. in the region as well as a voice of moderation and democracy in the Middle East. Iraq has functioning government institutions including an active legislature, is playing an increasingly constructive role in the region, and has a bright economic future as oil revenues surpass pre-Saddam production levels with continued rapid growth to come. The U.S. maintains vigorous and broad engagement with Iraq on diplomatic, political, economic, and security issues in accordance with the U.S.-Iraq Strategic Framework Agreement (SFA).

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<sup>12</sup> Response to the FORM, *supra* note 7.

The SFA between Iraq and the U.S. provides the basis for the U.S.-Iraq bilateral relationship. It covers the range of bilateral issues including political relations and diplomacy, defense and security, trade and finance, energy, judicial and law enforcement issues, services, science, culture, education, and environment. Efforts to implement the SFA are overseen by the Higher Coordinating Committee and several Joint Coordination Committees, which meet periodically.

The U.S. State Department warns that U.S. citizens in Iraq are at high risk for violence and kidnapping, and advises U.S. citizens not to travel to Iraq. The current travel advisory level is Level 4: "Do not travel to Iraq due to terrorism and armed conflict." 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.

The ability of the U.S. Embassy to provide consular services to U.S. citizens outside Baghdad is limited given the security environment. Anti-U.S. sectarian militias may threaten U.S. citizens and western companies throughout Iraq. Kidnappings and attacks by improvised explosive devices (IED) occur in many areas of the country, including Baghdad. Methods of attack have included explosively formed penetrators (EFPs), magnetic IEDs placed on vehicles, human and vehicle-borne IEDs, mines placed on or concealed near roads, mortars and rockets, and shootings using various direct fire weapons. Such attacks may take place in public venues such as cafes and markets.

Iraq witnessed continued terrorist activity in 2016, primarily as a result of the actions of Islamic State of Iraq and Syria (ISIL). In 2016, ISIL remained the greatest terrorist threat globally, maintaining a formidable force in Syria, including a large number of foreign terrorist fighters. ISIL's capacity and territorial control in Iraq has dramatically eroded in the past two years. According to estimates from the UN Assistance Mission for Iraq, acts of terrorism and violence killed more than 7,000 civilians and injured more than 12,000 in 2016. By the end of 2017, Iraqi Security Forces had liberated all territory from ISIL, drastically reducing ISIL's ability to commit abuses and atrocities. Nevertheless, anti-American/anti-western sentiment exists throughout Iraq. Human rights violations continue to be a problem with allegations of unlawful killings and other abuses being made against the Iraqi Security Forces and Popular Mobilization Forces.

In its annual human rights report, the U.S. Department of State reported that severe human rights problems were widespread. Sectarian hostility, widespread corruption, and lack of transparency at all levels of government and society weakened the government's authority and worsened effective human rights protections. Iraqi Security Forces, members of the Federal Police, and the Peshmerga committed some human rights violations, and there continued to be reports of Popular Mobilization Forces killing, torturing, kidnapping, and extorting civilians. ISIL committed the overwhelming majority of serious human rights abuses, including attacks against: civilians, (particularly Shia but also Sunnis who opposed ISIL); members of other religious and ethnic minorities; women; and children.

Observers also reported other significant human rights-related problems: harsh and life-threatening conditions in detention and prison facilities; arbitrary arrest and lengthy pretrial detention, denial of fair public trial; insufficient judicial institutional capacity; ineffective implementation of civil judicial procedures and remedies; arbitrary interference with privacy and homes; child soldiers; limits on freedom of expression, including press freedoms; violence against and harassment of journalists; undue censorship; social, religious, and political restrictions in academic and cultural matters; limits on freedoms of peaceful assembly and association; limits on religious freedom due to violence by extremist groups; restrictions on freedom of movement; refugee and internally displaced persons (IDP) abuse; both forced IDP returns and preventing IDPs from returning home; discrimination against and societal abuse of women and ethnic, religious, and racial minorities, including exclusion from decision-making roles; trafficking in persons; societal discrimination and violence against lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons; seizure of property without due process; and limitations on worker rights.

The United States' extraordinary commitment to Iraq is balanced against the inherent dangers of the ongoing conflict in Iraq to its citizens and residents and Iraq government problems developing and complying with the rule of law. A top national security goal of the United States is to establish relationships, cooperation, training, and support of the Iraq Government and military in the ongoing war against terrorism.

While most of the official U.S. commentary regarding Iraq focuses on human rights violations and terrorist activities, there is little, if any, evidence that Iraq is an active participant in economic espionage, industrial espionage or trade secret theft, or violator of export-control regulations.

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance."<sup>13</sup> 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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."<sup>14</sup>

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating

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<sup>13</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>14</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.



conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. 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 meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."<sup>15</sup> The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.<sup>16</sup>

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."<sup>17</sup>

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."<sup>18</sup> Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or

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<sup>15</sup> "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>16</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>17</sup> *Egan*, 484 U.S. at 531

<sup>18</sup> See Exec. Or. 10865 § 7.

patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

## **Analysis**

### **Guideline B, Foreign Influence**

The security concern under the Foreign Influence guideline is set out in AG ¶ 6:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. 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.

The guideline notes two conditions that could raise security concerns under 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;

(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 SOR focused on Applicant's five siblings, and their Iraqi citizenship and residence; two sisters-in-law, and their Iraqi citizenship and residence; his home ownership in Iraq with an approximate value of \$130,000; and his monthly \$320 Iraqi military pension. Before 2018, Applicant was bound to his family in Iraq by mutual affection. In addition to the citizenship and residence issues, the property owned in Iraq, and the military pension, other facts of particular note in the Government's argument in

the FORM are generally as follows: the frequency of contacts that Applicant has with his siblings and sisters-in-law; the presence of Islamist radical groups in Iraq; the increased levels of terrorism, violence, and insurgency in Iraq; significant human rights problems in Iraq; and the current U.S. Department of State travel advisory level stating: “Do not travel to Iraq due to terrorism and armed conflict.” All of these facts concerning country conditions in Iraq demonstrate a potentially heightened risk of exploitation, coercion or duress are present due to Applicant’s close ties to family members who reside in Iraq.

When an allegation under a disqualifying condition is established, “the Directive presumes there is a nexus or rational connection between proven conduct or circumstances . . . and an applicant’s security eligibility. Direct or objective evidence of nexus is not required.”<sup>19</sup>

There are safety issues for residents of Iraq primarily because of terrorists and anti-U.S. sectarian militias operating in Iraq. The mere possession of close family ties with relatives or in-laws living in Iraq is not, as a matter of law, disqualifying under the foreign influence guideline. However, if an applicant has such a relationship with even one person living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of sensitive information.<sup>20</sup> These types of relationships could create a “heightened risk” of foreign inducement, manipulation, pressure, or coercion. Furthermore, as a matter of common sense and human experience, there is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members, and this presumption includes in-laws.<sup>21</sup> Because of the SOR allegation associated with Applicant’s two sisters-in-law, the in-law presumption concerning foreign influence is relevant here.

The DOHA Appeal Board has indicated for foreign influence cases, “the nature of the foreign government involved and the intelligence-gathering history of that government are among the important considerations that provide context for the other record evidence and must be brought to bear on the Judge’s ultimate conclusions in the case. The country’s human rights record is another important consideration.”<sup>22</sup> Another important consideration is the nature of a nation’s government’s relationship with the United States. These factors are relevant in assessing the likelihood that an applicant’s family members living in that country are vulnerable to government coercion or inducement.

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<sup>19</sup> See Case No. 17-00507 at 2 (App. Bd. June 13, 2018) (citing ISCR Case No. 15-08385 at 4 (App. Bd. May 23, 2018)).

<sup>20</sup> See ISCR Case No. 08-02864 at 4-5 (App. Bd. Dec. 29, 2009); ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 at 12 (App. Bd. Feb. 8, 2001).

<sup>21</sup> See ISCR Case No. 17-03450 at 3 (App. Bd. Feb. 28, 2019); ISCR Case No. 09-06831 at 3 (App. Bd. Mar. 8, 2011); ISCR Case No. 07-06030 at 3 (App. Bd. June 19, 2008); ISCR Case No. 05-00939 at 4 (App. Bd. Oct. 3, 2007) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)).

<sup>22</sup> See ISCR Case No. 16-02435 at 3 (May 15, 2018) (citing ISCR Case No. 15-00528 at 3 (App. Bd. Mar. 13, 2017)).

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, 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 places a significant burden of persuasion on Applicant to demonstrate that his relationship with any family member living in Iraq does not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist a relative living in Iraq.

Foreign influence security concerns are 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.”<sup>23</sup> Friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security, and we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields.<sup>24</sup>

While there is no evidence that intelligence operatives, criminals, or terrorists from Iraq seek or have sought classified or economic information from or through Applicant or his family, it would not be wise 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, like many countries, has a problem with terrorism. Applicant’s family in Iraq “could be a means through which Applicant comes to the attention of those who seek U.S. information or technology and who would attempt to exert coercion upon him.”<sup>25</sup> Nevertheless, as noted above, because of the citizenship and residence issues of his family members; the property owned in Iraq; his military pension; and the other facts of particular note in the Government’s argument, the issues of potential foreign pressure or attempted exploitation have been raised, and AG ¶¶ 7(a) and 7(b) apply. Inasmuch as the property in Iraq has been sold, and he is no longer receiving his military pension, AG ¶ 7(f) minimally applies. However, further inquiry is necessary to determine the degree of “heightened risk” as well as the application of any mitigating conditions.

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<sup>23</sup> ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

<sup>24</sup> See ISCR Case No. 02-22461, 2005 DOHA LEXIS 1570 at \*11-\*12 (App. Bd. Oct. 27, 2005) (citing ISCR Case No. 02-26976 at 5-6 (App. Bd. Oct. 22, 2004)).

<sup>25</sup> ISCR Case No. 14-02950 at 3 (App. Bd. May 14, 2015)).

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign influence under 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;
- (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, 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;
- (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; 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.

As noted above, since October 2001, when U.S. forces and coalition partners led military operations in Afghanistan, there has been first an interim government, essentially under U.S. control by the Chief Civilian Administrator and a governing council, and then a democratic government in Iraq. Nevertheless, many daunting challenges remained largely because of Islamic terrorists and unfriendly forces continue to assert power and intimidation within the country. It is less likely that the Iraqi government would attempt coercive means to obtain sensitive information. The real concern in this instance is not the Iraqi government, but rather the Islamic terrorists and anti-U.S. sectarian militias.

Department Counsel argued that the presence of Islamist radical groups; the increased levels of terrorism, violence, and insurgency; and human rights problems in Iraq demonstrate that a heightened risk of exploitation, coercion or duress are present due to Applicant's close ties to his siblings and in-laws. Based on their various relationships, and the locations of Applicant's siblings and in-laws, there is obviously a potential, if not substantial, risk – a “heightened risk” – of foreign exploitation, inducement, manipulation, pressure, or coercion to disqualify Applicant from holding a security clearance.

However, that risk is not generated by the Iraqi government, but rather by Islamic terrorists striking out against the central Iraq authorities and all foreigners. Applicant's siblings and in-laws are not unlike members of the U.S. military stationed in Iraq, for they, too, are potential targets in this war on civilized humanity. The presence of Islamist radical groups and increased levels of terrorism, violence, and insurgency in Iraq have also been

described for events occurring on September 11, 2001, and more recently in Fort Hood, Boston, Paris, Nice, Orlando, San Bernardino, and New York City.

There are U.S. military forces stationed in Iraq, and Applicant's continued presence there as a linguist assisting the U.S. forces, while faced with the high-risk dangers involved there, would be of significant assistance to those U.S. forces in fulfilling their mission.<sup>26</sup> Such evidence clearly demonstrates that Applicant has repeatedly been willing to assume a high level of personal risk on behalf of the United States and shows his ties and sense of obligation to the United States could be sufficiently strong enough to support a favorable application of mitigating condition AG ¶ 8(b).<sup>27</sup>

As far as Applicant's siblings and in-laws are concerned, their relationships have substantially soured over time. As recently as August 2017, Applicant's contacts with his siblings were that he generally spoke to his sisters by telephone on a monthly to quarterly basis; he last spoke to one brother in May 2018; and had not had any contact with his other two brothers in about a year. In early 2018, Applicant's relationship with his brothers became strained following a falling out over financial support. As a result, he cut all ties with them. Two of Applicant's brothers are married to Iraqi-born wives, both of whom are teachers. Applicant initially spoke with them when he spoke with his brothers, but communication with them now is much more limited. Applicant clearly acknowledged: "I understand I left behind blood relatives in Iraq, however, the only people I care about are with me in [the United States] not in Iraq. . . . I swore an unwavering allegiance to the United States, and this will not change under any circumstances."

Furthermore, there is no evidence that Applicant's siblings and in-laws are or have ever been political activists, challenging the policies of the Iraqi government; that terrorists have approached or threatened them for any reason; that the Iraqi government or any terrorist organization have approached them; or that they currently engage in activities

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<sup>26</sup> ISCR Case No. 17-00629 (App. Bd. May 24, 2018) the Appeal Board discussed a translator's multiple tours on behalf of the United States in Iraq, limited time as a resident in the United States, and connections to family living in Iraq. The Appeal Board stated:

In general, an applicant's deployment to a combat zone in support of U.S. forces is not a factor that weighs against his or her national security eligibility. On the contrary, such deployments tend to establish various mitigating conditions such as [Directive] ¶ 8(b) ("there is no conflict of interest . . . because . . . the individual has such deep and longstanding loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest"); [Directive] ¶ 8(d) ("the foreign . . . activities are on U.S. Government business"); and [Directive] ¶ 8(f) ("the value or routine nature of the foreign business . . . is such that [it is] unlikely to result in a conflict of interest and could not be used effectively to influence, manipulate, or pressure the individual.")

*Id.* at 3 (internal footnotes omitted) (remanding administrative judge's denial of security clearance).

<sup>27</sup> ISCR Case No. 17-00629 (App. Bd. May 24, 2018); ISCR Case No. 05-03846 at 6 (App. Bd. Nov 14, 2006) (An applicant's work in support of U.S. forces in Afghanistan occurred "in the context of dangerous high-risk circumstances in which [he] made a significant contribution to national security.") *See also* ISCR Case No. 04-12363 at 2 (App. Bd. Jul. 14, 2006); ISCR Case No. 07-00034 at 2-3 (App. Bd. Feb. 5, 2008); and ISCR Case No. 10-02803 at 6 (App. Bd. Mar. 19, 2012).

that would bring attention to themselves. As such, there is a reduced possibility that they would be targets for coercion or exploitation by the Iraqi government or the terrorists, which may seek to quiet those who speak out against them. Under these circumstances, the potential heightened risk created by their residence in Iraq is greatly diminished. Under the developed evidence, it is unlikely Applicant 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.

Applicant has substantial connections to the United States, having lived in the United States for over a decade. His wife and two of his children are naturalized U.S. citizens residing in the United States. Two of the three children have university degrees, with one of them in her second year of medical school, His third child is in her final semester of a U.S. university. He owns a residence in the United States.

Applicant no longer owns a residence in Iraq, having sold it in 2018 after it had been for sale for some time. Furthermore, since his falling out with his brothers, he no longer receives the Iraqi military pension. But, even if he were still receiving that pension, it is highly unlikely that \$320 a month would result in a conflict that could be used effectively to influence, manipulate, or pressure him. Applicant has met his burden of showing there is little likelihood that relationships with his siblings and in-laws could create a risk for foreign influence or exploitation. Furthermore, considering what he previously said about the United States (“Seeing [his children] grow, prosper, and journey successfully towards their American dream make me proud to be an American. My allegiance for my country is paramount and unwavering;” and “When I took the citizenship oath, I swore an unwavering allegiance to the United States, and this will not change under any circumstances.”); as well as his professional activities as a linguist for U.S. forces in Iraq, I am persuaded that Applicant’s loyalty to the United States is steadfast and undivided, and that he has “such deep and longstanding relationships and loyalties in the U.S., that he can be expected to resolve any conflict of interest in favor of the U.S. interest.” AG ¶¶ 8(a), 8(b), 8(c), and 8(f) apply.

### **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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.<sup>28</sup>

There is some evidence against mitigating Applicant's situation, because his three brothers, two sisters, and two sisters-in-law are Iraqi citizen-residents, they are at risk from Islamic terrorists and anti-U.S. sectarian militias operating in Iraq. The Iraqi government does not fully comply with the rule of law or protect civil liberties in many instances. A former 1<sup>st</sup> Lieutenant in the Iraqi Army, he was medically discharged, and he received a monthly military pension of \$320.

The mitigating evidence under the whole-person concept is more substantial. Applicant is a 59-year-old employee of a defense contractor, currently serving as a linguist with U.S. forces in Iraq, where he is scheduled to remain until the end of 2019. He previously served in the same capacity during a period of increased hostilities and military action, and he contributed to the missions of the United States at personal risk on behalf of U.S. combat forces in Iraq. The United States and Iraqi governments are allies in the war on terrorism. Applicant has shown his patriotism, loyalty, and fidelity to the United States. His past and current honorable service as a linguist weighs heavily towards mitigating the foreign influence security concerns. These circumstances increase the probability that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group to coerce or exploit him.<sup>29</sup> Furthermore, he is no longer close to his family members who reside in Iraq; he no longer owns a house in Iraq; and he no longer receives his military pension.

Moreover, while the "heightened risk" of terrorist activities occurring in Iraq are also active in the United States, creating a "heightened risk" here as well. With his wife and children residing in the United States, there is a reduced "heightened risk" of foreign exploitation, inducement, manipulation, pressure, or coercion. Under the evidence presented, I have no questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

### **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. through 1.e.:	For Applicant

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<sup>28</sup> See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

<sup>29</sup> See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008).



## **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.

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ROBERT ROBINSON GALES  
Administrative Judge