



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



In the matter of:)
)
) ISCR Case No. 18-02151
)
Applicant for Security Clearance)

Appearances

For Government: Michelle Tilford, Esq., Department Counsel
For Applicant: *Pro se*

03/22/2019

Decision

KILMARTIN, Robert J., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on April 5, 2017. On October 5, 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. 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 answered the SOR on October 31, 2018, admitting all of the SOR allegations under Guideline B, foreign influence. Applicant also requested a hearing before an administrative judge. The case was assigned to me on January 25, 2019. The

Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for February 27, 2019. I convened the hearing as scheduled.

Government Exhibits (GE) 1 - 2 were admitted into evidence without objection. At the hearing, Applicant testified, and he submitted Applicant's Exhibits (AE) A – G, which were admitted without objection. DOHA received the transcript (Tr.) on March 13, 2019.

Procedural Ruling

Department Counsel submitted formal requests that I take administrative notice of certain facts relating to Iraq and Egypt. Applicant did not object and the requests were approved. The requests concerning Iraq and Egypt, 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 consideration 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).

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) controlled a significant portion of Iraq's territory at all relevant times. 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, IEDs, 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 - Egypt

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-standing strategic U.S.–Egypt relationship, current country conditions are problematic. The U.S. State Department urges citizens to use caution when traveling to Egypt due to terrorism and arbitrary detentions. Terrorist groups have committed multiple deadly attacks in Egypt. The potential for terrorist attacks in Egypt, including against U.S. citizens and Western interests, remains a concern. Two Islamic State of Iraq and Syria (ISIS) affiliates continue to pose a threat. Egypt also faced anti-regime violence primarily targeting security personnel. However, in November 2017, terrorists killed more than 312 civilians at a Sufi mosque in North Sinai. Also, significant human rights abuses persist in Egypt.

Findings of Fact¹

Applicant is 51 years old. He was married in 2005 and divorced in 2010. He married again in December 2013, and he has a two-year-old son. (GE 1, Tr. 28, 35) Applicant was born, raised, and educated in the U.S. He was employed in information technology by a federal contractor in Iraq from 2004 to 2013. (Tr. 54) He has been employed as a senior contracts administrator for a federal contractor since February 2017. (Tr. 51) He met his current wife in 2013 while she was working as a contractor for the United States (U.S.) from 2012 to 2014. (Tr. 43) She was born in Egypt and is a

¹ Unless otherwise stated, the basis for these findings of fact is Applicant's security clearance application (SCA) dated April 5, 2017 (GE 1) and the summaries of personal subject interviews conducted on January 4, 2018, and April 9, 2018. (GE 2)

dual citizen of Egypt and Iraq. Applicant's foreign-born wife and family present security concerns for him.

Applicant submitted a security clearance application on April 5, 2017.² In section 18 (Relatives) and section 19 (Foreign Contacts) of his SCA, he disclosed his wife, her parents, and siblings, as dual citizens of Iraq (paternal) and Egypt (maternal) and currently residing in Egypt. His wife has one sister, age 23, and two brothers, ages 26, and 29. (Tr. 13) Although Applicant's wife and her siblings were born in Egypt, they are considered dual residents of Egypt and Iraq since their father was an Iraqi. His children acquired Iraqi citizenship by default. (Tr. 31-32) In 2001, her entire family moved from Egypt to Iraq to be with her father's extended family. (Tr. 43) They remained in Iraq for 13 years. After college, Applicant's wife moved with her family back to Egypt in 2014 due to deteriorating conditions in Iraq. (Tr. 32-33) They maintain no ties to Iraq and have no desire to return to that war-ravaged country. (Tr. 33)

Applicant testified credibly that his wife could not find a job in Iraq after obtaining her college degree because her mother was an Egyptian and her family were Shia. (Tr. 33) They faced discrimination in Iraq. She obtained work in the Green Zone in Iraq where she met Applicant near the U.S. Embassy. Applicant finished his assignment overseeing contracts and left Iraq in 2013, but returned a few months later to marry his wife in December 2013. (Tr. 35) He waited so there would be no conflict of interest. Applicant met her family, whom he described as modern, secular, and non-political. (Tr. 38) Her parents are elderly and do not speak English. They have no ties to the government of Iraq or Egypt. Applicant and his wife moved to the U.S. in 2014. She has a green card and expects to be naturalized as a U.S. citizen in about one year. (Tr. 38)

Applicant's wife's two brothers were college educated in Baghdad, and her sister was college educated in Egypt. (Tr. 41) His wife and her two brothers all worked on a U.S. military installation in Iraq from 2012 to 2014, and all completed questionnaires for national security positions, and were vetted by either the U.S. DOD or U.S. Department of State (DOS) to work in Iraq for a major U.S. contractor. (Tr. 21-24) Applicant provided copies of their U.S.-issued security badges allowing access to the installation. (AE B,C,E,F) Applicant's wife was an administrative assistant. Her brother was a network administrator with unfettered access to U.S. computer systems. (Tr. 23-24)

Applicant testified credibly that while his wife loves her parents and siblings, his relationship with them is cordial, but not like family. Her parents are elderly and retired. (Tr. 46) His wife contacts her parents via an application known as *WhatsApp* approximately every few days. (Tr. 44) She uses the same application to contact her sister every two weeks, and her brothers about once a month. (Tr. 45) His wife is a homemaker and mother devoted to her family in the U.S. Her brothers are employed in data processing and telemarketing in Egypt. (Tr. 47) They face prejudice in Egypt because their father is Iraqi. (Tr. 47) Applicant's wife last visited her parents in Egypt in 2015. (Tr. 48) The parents' apartment there will likely be inherited by her brothers. (Tr. 49) Nobody in his wife's family knows what Applicant does for work.

² GE 1.

Applicant submitted AE A, which is a character reference letter for his wife written by the senior project manager for a federal contractor. It recognizes her for superior performance, and significant contributions from 2012 to 2013, while assigned to the security department of a major U.S. contractor in Iraq. He also submitted a copy of her Iraqi passport that expired in August 2016. (AE D) Applicant stated that she will never go back to Iraq and will not renew it. (Tr. 22) Applicant also submitted U.S. Department of State (DOS) travel advisories showing that Egypt poses the same level 2 (low) risk as France, Germany, and Mexico, compared to Iraq, which is a level 4 risk. (AE G)

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;
- (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
- (c) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, or pressure, or coercion.

Applicant’s wife’s parents and her two brothers and sister are dual citizens of Iraq and Egypt, and residents of Egypt. She loves her parents and siblings. She provides no financial support to her parents, but she contacts them regularly, as a dutiful daughter. On rare occasions, Applicant exchanges pleasantries with his in-laws during these *WhatsApp* calls. Applicant’s foreign contacts through his wife create a potential conflict

of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, both directly and vicariously through her family members. AG ¶¶ 7(a), 7(b), and 7(c), are implicated by the evidence. Accordingly, Applicant's relationship with his wife's parents and siblings, who are dual citizens of Iraq and Egypt, and residents of Egypt, 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;

(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; and

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

Applicant has demonstrated a long-standing preference for working with and supporting the U.S. He served in harm's way as a federal contractor for over 11 years and directly supported U.S. DOD interests. His wife and her two brothers were also vetted and hired as federal contractors in Iraq. They have no affinity for Iraq and are determined to never return. Their Iraqi citizenship is derived from their Iraqi father. His wife's family has resided in Egypt for five years. They are not involved in government, intelligence gathering, or politics in Egypt. That country is a long-standing ally of the U.S. and it is deemed a level 2 risk by the U.S. Department of State, which is akin to the risk level in France, Germany and many other close allies. Although he is presumed to have strong bonds of affection with his in-laws in Egypt, 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:

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).

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 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 wife's parents and siblings are dual Iraqi-Egyptian citizens residing in Egypt. Although Iraq is an unstable regime, they have no contacts or affection for Iraq. Egypt is a low risk. Applicant's contact with them is infrequent, if ever, by *WhatsApp*. There is no indication that they are affiliated with the Egyptian government or intelligence services. Applicant's wife'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.d.

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.

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

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 Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline. Applicant is 51 years old. He submitted a character reference on behalf of his wife attesting to her allegiance to the U.S. She is applying for citizenship in the U.S. Much of Applicant's professional life was spent in Iraq supporting U.S. interests and he has minimal contact with, and little affection for his in-laws. He is very low risk to ever be influenced by them.

Overall, the record evidence leaves me with no serious questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has mitigated foreign influence 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.d:	For Applicant

Conclusion

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

Robert J. Kilmartin
Administrative Judge