



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



In the matter of:)
)
) ISCR Case No. 18-02177
)
Applicant for Security Clearance)

Appearances

For Government: Nicholas Temple, Esq., Department Counsel
For Applicant: *Pro se*

09/05/2019

Decision

BENSON, Pamela C., Administrative Judge:

Applicant mitigated personal conduct security concerns; however, he did not mitigate foreign influence security concerns due to his familial connections to Iraq. Eligibility for access to classified information is denied.

Statement of the Case

On September 2, 2017, Applicant completed and signed a security clearance application (SCA). On December 7, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant detailing security concerns under Guidelines B (foreign influence) and E (personal conduct). The action was taken 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 (AG) effective within the DOD on June 8, 2017.

On February 8, 2019, Applicant responded to the SOR and requested a hearing. On June 5, 2019, the case was assigned to me, and on June 6, 2019, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for June 26, 2019. Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered three Government Exhibits (GE 1-3) and Applicant offered the three exhibits that were attached with his SOR response, which I labeled as Applicant Exhibits (AE) A through C. There were no objections and all proffered exhibits were admitted into evidence. I held the record open until July 26, 2019, in the event either party wanted to submit additional documentation. On July 7, 2019, DOHA received a transcript of the hearing. No other documents were received, and on July 26, 2019, the record closed.

Request for Administrative Notice

Department Counsel requested that I take administrative notice of certain facts about the Federal Republic of Iraq. Applicant did not object, and I have taken notice of facts contained in the documents.

Findings of Fact

Applicant admitted all of the SOR allegations. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is 32 years old, and he is seeking employment overseas as a linguist. He was born in Iraq, and in 2009, he immigrated to the U.S. at the age of 22 with his parents, three brothers and a sister. His father had been a driver for the United Nations, and felt threatened by local insurgents for speaking with a U.S. member of the United Nations. Applicant lives with his parents, sister, and two brothers, and they became naturalized U.S. citizens in 2014. Applicant is a dual citizen of Iraq and the U.S. He attended college in the U.S., and in 2016, he earned an associate's degree in business management. Applicant is not married and does not have any children. He is currently employed as a merchandiser for a beverage company. His government contractor employment as a linguist is contingent on obtaining a DOD security clearance. (Tr. 21-26, 37-39, 42; GE 1, GE 2)

The SOR raises the following foreign influence security concerns:

SOR ¶ 1.a alleges that Applicant maintains contact with various aunts, uncles and cousins who are citizens and residents of Iraq. In March 2016, Applicant returned to Iraq for vacation. He used his Iraqi passport to enter Iraq, and he renewed his Iraqi identification card while visiting. He stayed in Iraq just under four weeks with extended family members. He has five uncles, three aunts, and three cousins. He maintains regular contact with these family members on approximately a monthly basis. Applicant was uncertain if his uncles were employed by the Iraqi Government. He would like to return to Iraq in the future for vacation. His Iraqi passport expired in September 2016, and Applicant stated he had no intentions of renewing this passport. (Tr. 26-31, 34, 50-51, 53; GE 1, GE 2, GE 3; AE A, AE C)

The evidence in the record contained conflicting statements made by Applicant. During his September 2017 background interview, Applicant stated that he had no plans of renouncing his Iraqi citizenship. In September 2017, however, he presented a signed statement from his potential DOD employer indicating that he was willing to renounce

his Iraqi citizenship. During his November 2017 security-screening interview, he stated he would not renounce his Iraqi citizenship because he wanted to continue visits to Iraq. (Tr. 35-42; GE 2, GE 3; AE D)

In November 2017, Applicant reportedly stated that he was uncertain if he would stay in the U.S. since Iraq is his home and he believes Iraq will someday be a better place to live. His intentions were to maintain his Iraqi and U.S. citizenships, but he eventually planned to live in Iraq in the next five to ten years. When initially asked which country he is more loyal to, Applicant responded with Iraq. He later changed his response and stated that he is loyal to the U.S. first, but still considers himself loyal to Iraq because that is the country where he was born and raised. (Tr. 35-42; GE 2, GE 3; AE D)

At the hearing, Applicant denied stating in November 2017 that he was more loyal to Iraq than the U.S. He believed the interviewer misunderstood his responses. He told her to change some of his recorded responses that were incorrect, but she did not do so. He denied stating that he wanted to live in Iraq, but mentioned instead that he wanted to visit Iraq in the future for vacation. Applicant admitted that he continued to maintain his dual citizenship. (Tr. 35-42; GE 2, GE 3; AE D)

Personal Conduct

SOR ¶ 2.a alleges that Applicant falsified his September 2017 SCA by failing to report his foreign relatives in Iraq, as required. At the hearing Applicant denied intentionally omitting this information on the SCA. He misunderstood the question and thought he was only to report any connections to foreign organizations or governments that were a threat to the U.S. During his September 2017 background interview, the interviewer asked Applicant if he had ongoing contact with any foreign nationals, and he responded “No.” During his November 2017 security-screening interview, Applicant provided detailed information about his extended family members in Iraq. (Tr. 31-33; GE 1, GE 2, GE 3)

SOR ¶ 2.b alleges that Applicant intentionally falsified his September 2017 SCA by failing to report that he renewed his Iraqi identification card in 2016. In September 2017, Applicant provided the investigator his Iraqi identification card during his background interview. Applicant also provided a copy of his Iraqi identification card with his SOR response. It was not his intent to intentionally omit this information on the SCA. (GE 1; AE 2; SOR response)

Iraq

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.

The Strategic Framework Agreement (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.

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. 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 Iraqi Government and military in the ongoing war against terrorism.

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." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation

about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1. 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 about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline B: Foreign Influence

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

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

Applicant admitted his aunts, uncles and cousins are residents and citizens of Iraq, and he maintained approximately monthly contact with them. His frequent contacts with relatives in Iraq are manifestations of his care and concern for relatives living in that country.

The mere possession of close family ties with relatives living in Iraq is not, as a matter of law, disqualifying under Guideline B. However, if an applicant or his or her spouse 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 classified information. See ISCR Case No. 08-02864 at 4-5 (App. Bd. Dec. 29, 2009) (discussing problematic visits of applicant's father to Iran).

The DOHA Appeal Board has indicated for Guideline B 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." ISCR Case No. 16-02435 at 3 (May 15, 2018) (citing ISCR Case No. 15-00528 at 3 (App. Bd. Mar. 13, 2017)). 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.

I considered the totality of Applicant's ties to Iraq, the nature of its government, its relationship with the United States, and its human rights record, all of which are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion or duress is markedly greater if the foreign country has an authoritarian government, a family member is associated with or dependent on the government, the country conducts intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

There are widely documented safety issues for residents of Iraq because of terrorists and criminals. Thousands of United States and coalition armed forces and civilian contractors serving in the Middle East are targets of terrorists, along with their

families. Numerous linguists, supporting U.S. forces, have family living in countries that have continuing issues with terrorists. The relationship of Iraq with the United States, and the situation in that country places a significant burden of persuasion on Applicant to demonstrate that his relationships with any family member living in Iraq does not pose a trustworthiness or 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.

Applicant's extended family members 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." ADP Case No. 14-01655 at 3 (App. Bd. Dec. 9, 2015) (citing ISCR Case No. 14-02950 at 3 (App. Bd. May 14, 2015)). His relationships with relatives who are living in Iraq create a potential conflict of interest because terrorists could place pressure on his family in an effort to cause Applicant to compromise classified information. These relationships create "a heightened risk of foreign inducement, manipulation, pressure, or coercion" under AG ¶ 7. Department Counsel produced substantial evidence of Applicant's relationships with family in Iraq and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists the following 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 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 United States, 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.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government

presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” Directive, Enclosure 2 ¶ 2(b). ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant maintains regular and continuing contact with his uncles, aunts and cousins in Iraq. A key factor in the AG ¶ 8(b) analysis is Applicant’s “deep and longstanding relationships and loyalties in the U.S.” There are conflicting statements in evidence that Applicant is more loyal to Iraq than the U.S., and that he intends to return to Iraq to live in the near future. In 2016, he chose to use his Iraqi passport instead of his U.S. passport when he entered Iraq for vacation, and he also renewed his Iraqi identification card during his visit with extended family members.

Applicant has close relationships with extended family members in Iraq, and they are at risk from criminals, terrorists, and human rights violations from that country’s government. Applicant’s potential access to classified information could theoretically add risk to his relatives living in Iraq. In sum, Applicant’s connections to his relatives living in Iraq are too significant to mitigate in the circumstances Applicant presented. His connections to the United States taken together are not sufficient to overcome the foreign influence security concerns under Guideline B.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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 provide truthful and candid answers during national security investigative or adjudicative processes. ...

AG ¶ 16 describes conditions that could raise a security concern and be disqualifying. The following is potentially applicable under the established facts in this case:

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

Applicant failed to list his foreign relatives and his possession of an Iraqi identification card he renewed in 2016 on the SCA he completed in September 2017. I did not find the omission intentional. The above disqualifying condition does not apply.

Applicant has consistently stated that the SCA questions were confusing to him, and that he did not intentionally omit relevant and material information when he filled out the security clearance paperwork in September 2017. During his background interview that same month, he brought his Iraqi identification card with him to show the DOD investigator. During his security-screening interview, Applicant brought detailed information about his Iraqi extended family members. I noticed during the course of the hearing, many questions needed to be repeated or rephrased so Applicant could understand the question. The evidence supports that he made good-faith efforts to provide the information only after he fully understood the need to report the information. His failure to initially provide relevant information happened under such unique circumstances that it does not cast doubt on the Applicant's reliability, trustworthiness, or good judgment. Personal conduct security concerns are mitigated.

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), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guidelines B and E are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is 32 years old, and he is seeking employment overseas as a linguist. In 2009, he arrived in the U.S. with his parents, a sister, and three brothers. In 2014, he became a U.S. citizen. He is a dual citizen of Iraq and the U.S.

Applicant has frequent contact with his extended family members, who are residents and citizens of Iraq. Frequent contacts with relatives in a foreign country are manifestations of one's care and concern for those family members. There is no evidence that his relatives are current employees of a foreign government or foreign military personnel. His relationship with his extended family members in Iraq are positive character traits; however, they raise important foreign influence security concerns. Connections to a foreign country must be balanced against connections to the United States.

A Guideline B decision concerning Iraq must take into consideration the geopolitical situation and dangers there. Iraq is dangerous due to on-going violence from terrorists, and the government does not respect the full spectrum of human rights. Terrorists continue to threaten the interests of the United States, U.S. Armed Forces, and those who cooperate and assist the United States.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude personal conduct security concerns are mitigated; however, foreign influence security concerns are not mitigated. Eligibility for access to classified information is denied.

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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	For Applicant

Conclusion

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

Pamela C. Benson
Administrative Judge