



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



In the matter of:	)	
	)	
[Name Redacted]	)	ISCR Case No. 18-02191
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel F. Crowley, Esquire, Department Counsel  
For Applicant: Leon J. Schachter, Esquire

05/07/2019

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**Decision**

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HOGAN, Erin C., Administrative Judge:

On September 26, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, Foreign Influence and Guideline C, Foreign Preference. The action was initially taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented within the Department of Defense on June 8, 2017.

On October 22, 2018, Applicant timely answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 14, 2018. The case was assigned to me on February 12, 2019. On February 13, 2019, a Notice of Hearing was issued, scheduling the hearing for March 28, 2019. The hearing was held as scheduled. During the hearing, the Government offered six exhibits. Government exhibits 1-5 were admitted without objection. Applicant’s counsel objected to the admission of Gov 6 on the basis of paragraph E3.1.20 of the Directive. Gov 6 was not admitted. Applicant offered nine exhibits, which were admitted as Applicant Exhibits (AE) A – H, without objection. The Government and the Applicant requested administrative notice be taken of certain facts regarding the country of Iraq.

The administrative notice documents were marked as Administrative Notice Document I (Admin Not I) and Admin Not II. The transcript was received on April 11, 2019. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

### **Administrative Notice - Iraq**

A coalition of countries led by U.S. and British forces invaded Iraq on March 20, 2003. Dictator Saddam Hussein was deposed and on May 12, 2003, the United States established the Coalition Provisional Authority as the interim civil authority in Iraq. About one year later, the Coalition Provisional Authority transferred sovereignty to the new Interim Iraqi Government led by Prime Minister Ayad Allawi. Throughout the governance of the Coalition Provisional Authority and the peaceful transfer of power, the role of Iraqi interpreters was vital to U.S. military success. Recognizing the role of local Iraqi interpreters – and the dangers they faced as a result of their assistance to the United States – Congress authorized a “Special Immigrant Visa” program that allowed local interpreters who served with distinction to immigrate to the United States. (Admin Not II)

Since 2005, the U.S. government has approved more than \$18.6 billion worth of foreign military sales to Iraq. U.S. security assistance supports the development of a modern, accountable, and professional Iraqi military capable of defending Iraq and its borders. U.S. security assistance programs also promote civilian oversight of the military, adherence to the rule of law, and the respect for human rights, while simultaneously increasing the Iraqi military’s capability to respond to threats and counter-terrorism operations. The U.S. Embassy Baghdad maintains the Office of Security Cooperation – Iraq to further these goals and to facilitate Iraq’s role as a responsible security partner, contributing to the peace and security of the region. (Admin Not II)

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 Nouri al-Maliki to Prime Minister Haider al-Abadi. (Admin Not 1)

The U.S. Department of State warns that travel within Iraq remains very dangerous and the ability of the U.S. Embassy to assist U.S. citizens is extremely limited. U.S. citizens in Iraq are at high risk for kidnapping and terrorist violence. Numerous terrorist and insurgent groups are active in Iraq, including ISIS. Such groups regularly attack Iraqi security forces and civilians. Anti-U.S. sectarian militias may also threaten U.S. citizens and western companies throughout Iraq. (Admin Not 1)

Severe human rights problems are widespread in Iraq. 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. Problems include harsh and life-threatening conditions in detention and prison facilities; arbitrary arrests and lengthy pretrial detention; limits on freedom of expression to include press, social, religious and political restrictions in academic and cultural matters; discrimination against and societal abuse of women and ethnic, religious, and racial

minorities; seizure of property without due process and limitations of worker rights. (Admin Not 1)

### **Findings of Fact**

Applicant is a 39-year-old linguist employed by a Department of Defense contractor since August 2017. He is currently stationed overseas. He is applying for a security clearance. He became a U.S. citizen in May 2016. He was born, raised, and educated in Iraq. He received a college degree in Iraq. He is single and has no children. (Gov 1; AE F) (Note: The facts in this decision do not specifically describe employment, names of witnesses, or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.)

### **Foreign Influence**

Between April 2004 and February 2011, Applicant served as a local hire with the U.S. government in Iraq. He started out as a security guard in the Green Zone. In 2007, he became a linguist. From December 2008 to October 2009, he served as an instructor. He worked with U.S. trainers who were training Iraqi police. From December 2009 to February 2011, he worked as a linguist. Applicant often encountered danger while working in Iraq as a U.S. contractor. He testified that the base would experience mortar attacks on a weekly basis. He had to be situationally aware when he left the base because assassination groups were watching any vehicles that left the base. He took security precautions such as keeping his badges under his shoe cushion and traveling different routes every day. He told his friends and family that he was working as a security officer at the ministry of industry. In February 2011, he immigrated to the United States with the help of the U.S. government and the International Organization for Migration, an organization that helps Iraqis who work for the U.S. government in Iraq to immigrate to the United States in order to protect them from the risk of violence. (Tr. 50-54; Gov 1; AE B; AE D; AE E)

When he first arrived in the United States, Applicant worked for a temp agency. In November 2011, he found a full-time job working for a large on-line retailer in a warehouse. In December 2015, he was promoted to supervisor. In August 2017, he became a linguist overseas with a U.S. contractor. He initially deployed to a middle-eastern country (not Iraq) with the U.S. Army. In January 2019, Applicant was transferred to a linguist position in another middle-eastern country (not Iraq). He decided to become an overseas linguist again out of gratitude to the United States for allowing him to become a U.S. citizen. He saw it as an opportunity to serve his new country. (Tr. 50-54; Gov 1; AE B; AE F)

The SOR raises security concerns because Applicant has family members who are citizens of and reside in Iraq. Specifically, Applicant's mother, three brothers and three sisters are citizens and residents in Iraq. (SOR ¶ 1.a and SOR ¶ 1.b). His oldest brother also serves as a senior officer in the Iraqi military. (SOR ¶ 1.c) Applicant admits the allegations. His mother is 74. She is a housewife. She lives in a house with one of Applicant's sisters. Applicant's oldest sister is seven years older than him. She is a housewife. Another sister is a teacher. She is five years older than Applicant. His third

sister is three years older than him and is a housewife. His sisters and his mother are not connected to the Iraqi government. (Tr. 39-41, 47-48, 58)

Applicant has two older brothers. His oldest brother is 14 years older than him. Applicant's younger brother is a sergeant in the Iraqi military. He is four years younger than Applicant. His middle brother is a radiologist who works at a hospital. Applicant's family members are not aware that he works for the U.S. government. He tells them that he works for a private company. (Tr. 43-46; Gov 1; Gov 3, 4, 5)

Applicant provided information about his family members, each time he completed a counter-intelligence update when he was employed with DOD contractors while he was a citizen of Iraq. His family members raised no issues at the time. (Tr. 60; Gov 3, 4, 5)

### **Foreign Preference**

Under the Foreign Preference concern, it is alleged that Applicant used his Iraqi passport in lieu of the U.S. passport to enter and exit the United States in April 2017. Applicant testified that he used his U.S. passport to exit and enter the United States after becoming a U.S. citizen in May 2016. He admits that he used his Iraqi passport to enter and exit Iraq even though he had a U.S. passport. He used the Iraqi passport because he did not need a visa and it was easier to go through the security lines at the Iraqi airport. Since that trip, Applicant renounced his Iraqi citizenship and surrendered his Iraqi passport to his facility security officer in April 2017. I find for Applicant under the security concern under Foreign Preference, because he no longer possesses an Iraqi passport. Under the new guidelines effective on June 8, 2017, the possession of a foreign passport does not raise security concerns as long as Applicant informed his facility security officer. (Tr. 66-69; AE H)

### **Whole-person Factors**

Applicant's dream was to become a U.S. citizen. He has established a life here. His bank accounts are located in the United States. He owns stock. He bought a car in the United States. He has friends in the United States. He saved up \$83,000 in hopes of eventually purchasing a home in the United States. He attempted to sign up for the selective service, but was advised he was not required to because of his age. He is registered to vote in the United States. In September 2018, he received a performance bonus based on his performance and conduct during the first year of his current linguist contract. (Tr. 55-57; AE A; AE C – AE F)

In 2010, he received a Longevity Award, for his exemplary performance and dedication to duty while serving as a linguist. (AE E) Several of his co-workers provided letters attesting to his trustworthiness and reliability. A former co-worker, who has known Applicant for 12 years, states Applicant is "very respectful and dedicated to his work and the people that worked with him." He said Applicant described the United States as "the best place on earth!" (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 useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(a), the entire process is a 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 access for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or 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.

Section 7 of Executive Order (EO) 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline B: Foreign Influence

AG ¶ 6 explains the Government's concern under Foreign Influence:

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 lists conditions that could raise a security concern and may be disqualifying. The following are applicable to Applicant's 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.

In Applicant's case, AG ¶ 7(a) and AG ¶ 7(b) apply. The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, 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. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001). Applicant's mother, three brothers and three sisters are citizens of and reside in Iraq. This creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of Iraq's serious human rights problems, and its issues with terrorism. The government of Iraq has made some progress, but a heightened risk remains. Applicant's family in Iraq also create a potential conflict of interest between his obligation to protect classified information and his desire to help his family members by providing that information. The risk is heightened further because one of Applicant's brothers is a senior officer in the Iraqi Army.

The Government produced substantial evidence of disqualifying conditions AG ¶¶ 7(a) and 7(b). The burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the Government.

AG ¶ 8 lists conditions that could mitigate security concerns. The following mitigating condition applies:

(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.

I considered the totality of Applicant's ties to Iraq. The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. 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 United States, or the foreign country is associated with a risk of terrorism.

At great risk to himself, Applicant worked for the U.S. government in Iraq from 2004 to 2011 while he was an Iraqi citizen. His efforts resulted in the U.S. government granting Applicant permanent residency. Applicant immigrated to the United States in 2011. He settled in the United States and found a good job. He became a U.S. citizen in May 2016. Out of gratitude for being granted citizenship, Applicant became a contractor supporting the U.S. government as a linguist. While previously working as contractor-linguist in Iraq, he worked alongside U.S. forces under combat conditions. In ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006), the Appeal Board discussed this issue as follows:

As a general rule, Judges are not required to assign an applicant's prior history of complying with security procedures and regulations significant probative value for the purposes of refuting, mitigating, or extenuating the security concerns raised by that applicant's more immediate disqualifying conduct or circumstances. See, e.g., ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No. 02-10113 at 5 (App. Bd. Mar. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd. May 30, 2006). However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the national security. See, e.g., ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006). The presence of such circumstances can give credibility to an

applicant's assertion that he can be relied upon to recognize, resist, and report a foreign power's attempts at coercion or exploitation.

I considered Applicant's longstanding commitment to the United States as well as his favorable contributions to national security. He worked under dangerous conditions as a security guard and linguist for the U.S. government. His efforts resulted in him being granted permanent residency in the United States. I find that Applicant can be expected to resolve any potential conflict of interest in favor of the United States. AG ¶ 8(b) is applicable. The security concerns under Foreign Influence are mitigated.

### **Guideline C, Foreign Preference**

The security concern relating to the guideline for Foreign Preference is set out in AG ¶ 9:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

The guideline notes several disqualifying conditions that could raise security concern under paragraph 10. The following potentially applies in Applicant's case:

AG ¶ 10(c): failure to use a U.S. passport when entering or exiting the U.S.

The above disqualifying condition does not apply to Applicant's case. During a trip to Iraq after Applicant became a U.S. citizen, he used his U.S. passport to exit and enter the United States. He used his Iraqi passport to enter and exit Iraq. He fully disclosed the use of his Iraqi passport to security officials at his present employer. In April 2017, he destroyed his Iraqi passport in the presence of his facility security officer. Based on the facts of this case, AG ¶ 10(c) does not apply to Applicant's case. The Foreign Preference concern is found for Applicant.

### **Whole-Person Concept**

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

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation



for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

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

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's gratitude to the U.S. government for accepting him as a refugee and granting him U.S. citizenship. I considered his support of the U.S. government overseas both before and after becoming a U.S. citizen. Applicant hopes to earn enough income to purchase a home so that he can provide for his future family in the United States.

I considered the reference letters and awards indicating the valuable service Applicant provided as a linguist for the U.S. government working on sensitive projects that were vital to U.S. national security. The foreign influence and foreign preference security concerns are mitigated.

### **Formal Findings**

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

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

### **Conclusion**

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

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ERIN C. HOGAN  
Administrative Judge