



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



In the matter of:)
)
) ISCR Case No. 18-02185
)
Applicant for Security Clearance)

Appearances

For Government: Mary M. Foreman, Esq., Department Counsel
For Applicant: *Pro se*

05/28/2019

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On September 19, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence. 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 on June 8, 2017.

Applicant answered the SOR on November 5, 2018, and requested a hearing before an administrative judge. The case was assigned to me on February 25, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 13, 2019. I convened the hearing as scheduled on April 19, 2019. The Government offered

exhibits (GE) 1 through 3. Applicant testified and offered Applicant Exhibit (AE) A. There were no objections to any of the exhibits offered, and they were admitted into evidence. DOHA received the hearing transcript on April 30, 2019.

Request for Administrative Notice

Department Counsel submitted Hearing Exhibit I, a written request that I take administrative notice of certain facts about Iraq. Applicant did not object, and I have taken administrative notice of the facts contained in the request that are supported by source documents from official U.S. Government publications.¹ The facts are summarized in the Findings of Fact, below.

Findings of Fact

Applicant admitted the allegations in the SOR ¶¶ 1.a through 1.c and denied 1.d and 1.e. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 52 years old. He was born in Iraq and graduated from high school there in 1989. He was conscripted into the Iraqi Army and went through basic training. He had an option to work in a factory for ten years instead of military service. He chose to work in the factory and did so until he fled to Jordan in 1998. He worked there for a year before returning to Iraq in 1999. He testified that he paid a bribe to be released from his factory contract. He was then self-employed.²

Applicant married in 2002. He has three children, ages 16, 14 and 11, who were all born in Iraq. From 2003 to 2006, he worked for the United States Government in Iraq. From 2007 to 2010, he worked as an interpreter for United States military forces in Iraq. He served with the forces until there was a drawdown, and he was laid off.³

Applicant provided letters of recommendations from some of the U.S. military personnel with whom he served in Iraq from 2007 to 2010. He was praised for his service and guidance on cultural matters. It was noted he was dedicated to his duty and completely devoted to the mission of securing and rebuilding Iraq. He was excellent at his job and a consummate professional. The letters also reflected that Applicant participated in daily patrols in high threat areas and combat operations, which put him considerable risk to his safety and security. He was responsible for tactical questioning of suspected insurgents and translation of confiscated documents. He assisted immeasurably in communication with the Iraqi local nationals and Iraqi Security Forces.

¹ Source documents are attached to Hearing Exhibit I.

² Tr. 18-22; GE 1, 2.

³ Tr. 18-22, 73-79.

Despite these constant threats, he served the U.S. forces with distinction.⁴ One of the letters stated the following:

[Applicant] was an invaluable asset to 1st Platoon during his three-month tenure. He enabled the successful conduct of over 150 combat operations in [city] and [city] Iraq. His mastery of the English language and understanding of the local dialect, customs, and idioms provided a seamless link between Coalition Forces and the local populace, supporting both combat and stability operations. Furthermore, his ability to translate the United States Army's technical jargon into terms Iraqi Security Forces could understand was essential for rapid commands on the battlefield.

[Applicant] has an unparalleled work ethic. The difficult missions and long hours involved in translating for a United States Army Infantry platoon demand only strong, skilled, responsible men. [Applicant] is a prime example of such a man.⁵

In 2010, Applicant and his family immigrated to the United States as refugees. Applicant had applied for a Special Immigration Visa (SIV) because of his service to the United States Government. He had already immigrated and was living in the United States with his family when an SIV was approved, so he chose to not change his immigration status. He attempted to enlist in the American military because he liked working with them. He was told he was too old. In July 2016, he became a naturalized citizen of the United States. He testified that after he became a U.S. citizen, he applied to work as a linguist Iraq.⁶

Applicant's father passed away in 2006. Applicant returned to Iraq to visit his mother in 2012, 2014, and 2018. Applicant maintains close contact with his mother, and speaks with her by phone regularly. He does not know her exact age, but she is at least in her 90s. He has three sisters. His mother lives with two of his sisters and two nephews. Applicant communicates with them when he calls his mother. One sister is single and the other is a widow. His single sister works as a technician. His widowed sister works in a factory. His mother and two sisters are citizens and residents of Iraq. His widowed sister has two sons, one who is a severely handicapped teenager. They both live with her. His nephew contacts Applicant regularly due to the isolation caused by his disability. Applicant's third sister is also a widow who has six children. Applicant was unsure if any of them live with her, but thought perhaps one did. She is a citizen and resident of Iraq and supports herself with her husband's pension. He last saw her in 2014 and has occasional social media contact.⁷

⁴ Tr. 80.

⁵ AE A.

⁶ Tr. 22-27, 79-80; GE 1, 2.

⁷ Tr. 27-33, 41-48; GE 1, 2.

Applicant has two brothers, one is a permanent resident of the United States and the other is a citizen and resident of Iraq. Applicant sponsored his brother, his brother's wife and their one minor child for immigration to the United States. Their other children were over 18 years old and remained in Iraq. Applicant's brother's wife is also a permanent resident. Applicant's other brother is married with children. He is a citizen and resident of Iraq. He is a tailor. Applicant sometimes communicates with him through social media. Applicant visited him during his last visit to Iraq in 2018, but had not seen him for many years before that.⁸

Applicant's wife's parents are citizens and residents of Iraq. She contacts them regularly. She has returned to Iraq twice to visit, once with the children. She works in a restaurant. She sends her parents money. Her father is not employed. In about 2013, Applicant's wife's brother died from an improvised explosive device. He was in the Iraqi Army, but was not on duty at the time. Her father receives the brother's pension. She also has another brother and three sisters who are citizens and residents of Iraq. His wife intends to visit her family in Iraq in the future.⁹

Applicant testified that he has a big family and most of his contact with them is through social media and consists of a casual greeting. He believes some of his relatives are jealous that he is now an American citizen. He has told them to stop contacting him on social media. He does not have anything in common with them anymore. Applicant has many nieces, nephews, and cousins. He disclosed that one of his nephews is a police officer with the Iraqi National Police. Another nephew works with the Iraqi public works department. He did not know his specific job. They are all citizens and residents of Iraq. He contacted some of his relatives when he was completing the security clearance documents so he could obtain accurate information. Some were aware he was applying for a job with the United States Government, but not the specific job, or that he may be returning to Iraq.¹⁰

In 2010, before Applicant immigrated to the United States, he sold a house that was co-owned by family members. The proceeds were split among the siblings. His mother and two sisters wanted to purchase another house. Before Applicant's father passed away, he told Applicant to take care of his mother and sisters. Applicant took his share of the profit he earned on the sale of the house, which was \$22,000, and loaned them \$18,000, so they could purchase the new house. They put his name on the deed of the house. They intended to repay him, but Applicant knows they are unable to repay him and he considers it a gift to them. He asked them to sell the house so his name could be removed from the deed or to take his name off the deed, so it would not cause complication. They do not want to sell the house because they need stability for the handicapped teen. Applicant testified that he financially helps his sisters and mother if

⁸ Tr. 33-41; GE 1, 2.

⁹ Tr. 48-54; GE 1, 2.

¹⁰ Tr. 54-60, 84-85; GE 1, 2.

they need it. He said that he has applied for his one sister and two nephews to immigrate to the United States.¹¹

In 2013, Applicant purchased a house in the United States, which cost about \$94,000. He owns two vehicles. He has a checking and savings account in the United States with assets of about \$10,000. He had a bank account in Iraq, but it was dormant for more than five years and was closed by the bank. He stated that his life is in the United States. He considers the United States his country and is not loyal to any other.¹²

IRAQ

The United States Department of State warns that U.S. citizens in Iraq remain at high risk for kidnapping and terrorist violence and to avoid all travel to Iraq. The ability of the U.S. Embassy to provide consular services to U.S. citizens outside Baghdad is extremely limited given the security environment. ISIS controls a significant portion of Iraq's territory. Within areas under ISIS control, the Iraqi government has little or no ability to control and ensure public safety.

Numerous terrorist and insurgent groups are active in Iraq, including ISIS. Such groups regularly attack both Iraqi security forces and civilians. Anti-U.S. sectarian militias may also threaten U.S. citizens and western companies throughout Iraq. U.S. Government and western interests remain possible targets for attacks.

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.

There are significant human rights problems in Iraq to include: sectarian hostility, widespread corruption, lack of transparency at all levels of government and society that have weakened the government's authority and worsened effective human rights protections. Iraqi security forces and members of the Federal Police have committed human rights violations to include killing, kidnapping, and extorting civilians. There are also problems that include harsh and life-threatening conditions in detention and prison facilities, arbitrary arrest and lengthy pretrial detainment, denial of fair public trial, limits on freedom of expression, freedom of the press, censorship of religion, limits on peaceful assembly, and societal abuses of women. ISIS is also responsible for human rights abuses.

Policies

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

¹¹ Tr. 61-66.

¹² Tr. 66-71.

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(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." 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.

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

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

Analysis

Guideline B: Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they resulted 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 it associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and the following are potentially applicable:

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

AG ¶¶ 7(a), 7(e), and 7(f) require evidence of a "heightened risk." The "heightened risk" necessary to raise these disqualifying conditions is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant's family ties to a foreign country as well as each individual family tie must be considered.

Applicant's mother, brother, three sisters, and his wife's parents are citizens and residents of Iraq. He has other extended family members who are also citizens and residents of Iraq. Applicant has ties of affection to many of them. He maintains regular contact with his mother and his two sisters who live with her and his nephews. He has

infrequent contact with other relatives. Applicant's family residing in Iraq creates a heightened risk and a potential foreign influence concern.

The United States Department of State warns U.S. citizens against travel to Iraq because of continued instability and threats by terrorist organizations against U.S. citizens. It also has serious concerns about terrorist activities in Iraq that specifically target Americans. There are widely documented safety issues for residents of Iraq because of terrorists and insurgents. Applicant has supported the U.S. Government through his work as a translator and linguist and is willing to do so in the future. Numerous linguists, translators and advisors supporting U.S. forces, have families living in Iraq. Thousands of the U.S. and coalition armed forces and civilian contractors serving in Iraq are targets of terrorists, along with Iraqi civilians, who support the Iraq Government and cooperate with coalition forces.

The mere possession of a close personal relationship with a person, who is a citizen and resident of a foreign country is not, as a matter of law, disqualifying under Guideline B. However, depending on the facts and circumstances, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.

The nature of a nation's government, its relationship with the United States, and its human-rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government; 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 place a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationships with his family members living in Iraq do 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.

While there is no evidence that intelligence operatives or terrorists from Iraq seek or have sought classified or economic information from or through Applicant or his family, nevertheless, it is not prudent 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 has an enormous problem with terrorism. Applicant's relationships with relatives living in Iraq create a potential conflict of interest because terrorists could place pressure on his family living there 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. Substantial evidence was produced of Applicant's contacts with family in Iraq and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), and 7(e) apply.

Applicant owns a shared interest in a house where his mother and two sisters live. He loaned them money, and they put his name on the deed of the house. They are unable to repay the loan. He considered the loan a gift and does not expect repayment. Based on Applicant's financial interests and ties in the United States, I find his financial interest in the house nominal and does not raise a heightened risk of foreign influence or create a personal conflict of interest. I find AG ¶ 7(f) does not apply.

After the Government produced substantial evidence of those disqualifying conditions, the burden shifted to Applicant to rebut them or otherwise prove mitigation. The following mitigating conditions under AG ¶ 8 are potentially applicable:

(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 interests in favor of the U.S. interests; 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's mother, brother, sisters, parents-in-law and other relatives are citizens and residents of Iraq. He maintains a close relationship with some of them and not others. He talks with his mother regularly and often with his sisters and nephews living with her. He has visited them in past years. He has had infrequent visits with relatives and talks to them infrequently during the year. Applicant's contact with his family is infrequent, but not casual. AG ¶ 8(c) does not apply.

AG ¶ 8(b) applies. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant worked for the United States Government from 2003 to 2006. He then served on dangerous missions and combat operations with U.S. military forces from 2007 to 2010. He immigrated to the United States and was subsequently granted an SIV after he arrived. In 2017, he applied for a job to return to serve with U.S. military forces in Iraq. Applicant became a U.S. citizen, bought a home, and lives in the United States with his immediate family. He has financial assets in the United States. His brother and family also live in the United States.

Applicant's years of supporting the United States military in Iraq as a linguist, including the dangers that service entailed, weigh heavily toward mitigating security concerns. He hopes to continue to support the United States' goals in Iraq. He is loyal and committed to the United States.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with relatives who are citizens and resident of Iraq. Like every other resident of Iraq, any of his relatives who may be living in Iraq are at risk from terrorists.

Applicant has one brother who is a tailor in Iraq. He has infrequent contact with him. He has two nephews who have contacts with government entities in Iraq. One is in the police force and another works with a ministry department. He has ongoing contact with his mother, two sisters, and two nephews. He has limited contact with other relatives. His wife has regular contact with her parents in Iraq. I have considered all of these contacts. In doing so, it is important to be mindful of the United States' huge investment of manpower and money in Iraq, and Applicant's support for the U.S. goals and objectives in Iraq. Applicant and his family living in Iraq are potential targets of terrorists, and Applicant's potential access to classified information could theoretically add risk to his relatives living in Iraq from lawless elements in Iraq.

Applicant's possible future connections to his relatives living in Iraq are less significant than his connections to the United States. His employment in support of the U.S. Government, financial interests and bonds to the United States, performance as a linguist to U.S. forces, and U.S. citizenship are important factors weighing toward mitigation of security concerns. Based on Applicant's deep and longstanding relationship, and proven loyalty to the United States, he can be expected to resolve any conflict of interest in favor of the United States. His connections to the United States taken together are sufficient to fully overcome and mitigate the foreign influence security concerns under Guideline B.

Whole-Person Concept

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

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

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

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. 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, but some warrant additional comment.

