



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



In the matter of:)
)
) ISCR Case No. 18-02193
)
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: Sarah Al Janabi, Personal Representative

July 8, 2019

Decision

LOKEY ANDERSON Darlene D., Administrative Judge:

Statement of the Case

On November 21, 2018, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline B. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

Applicant answered the SOR on January 4, 2019, 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 issued a notice of hearing on March 19, 2019, and the hearing was convened as scheduled on May 7, 2019. The Government offered four exhibits, referred to as Government Exhibits 1 through 4, which were admitted without objection. The Applicant offered two exhibits, referred to as Applicant’s Exhibit A and B, which were admitted without objection. Applicant called one witness

and testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on May 15, 2019.

Procedural Rulings

The Government requested I take administrative notice of certain facts relating to the country of Iraq. Department Counsel provided a seven page summary of the facts, supported by sixteen Government documents pertaining to Iraq, identified as Government Exhibit 4. The documents provide elaboration and context for the summary. Applicant had no objection. I took administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

Applicant admitted each of the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 59 years old and married with three adult children. He has a Master's degree in Electrical Engineering. He is applying for a position as a Linguist with a defense contractor. A security clearance is required in connection with this employment. He currently works for a different defense contractor as a Senior Network Engineer, where a security clearance is not required.

Applicant was born and raised in Iraq. After high school, Applicant was sponsored to attend college by the Iraqi Ministry of Defense. By agreement with the Ministry of Defense, they paid for Applicant's education, and he in turn was obligated to serve in the Iraqi military indefinitely. From January 1979 to October 1984 Applicant attended the military academies in two European countries, where he obtained his Bachelor's and Master's degrees. Applicant was then committed to serve in the Iraqi Air Defense Force, where he served from October 1984 until October 2003, nineteen years. He retired at the rank of a Colonel. (Tr. pp. 75 -76.)

In 2003, the country of Iraq was in great turmoil and there was no structured government. Applicant left the military, escaped the danger in Baghdad, and brought his wife, who he married in 1988, and their three children to the United Arab Emirates as a temporary refuge. Iraq was not safe for them anymore. Applicant explained that because he is a Shiite and his wife is a Sunni, they were no longer welcome in Iraq. Applicant lived in the United Arab Emirates until 2009, when he was granted political asylum and came to the United States. Applicant became a naturalized U.S. citizen in 2015. His wife and adult children were all born in Iraq. They came to the United States in 2007, and became citizens of the United States in 2015. (Tr. pp. 69-70.)

Applicant has a number of friends and family members who are citizens and residents of Iraq. He has maintained contact with several Iraqi citizens who attended the military academy with him. Two of the individuals became high ranking officers in the Iraqi military. Applicant met these individuals as classmates of his during the time he attended the Iraqi military academies. One of the individuals is now a member of parliament. Since leaving Iraq in 2003, Appellant has on occasion contacted his school friends through facebook, but has no regular contact with them.

Applicant also has a substantial number of family members who are citizens and residents of Iraq. His family in Iraq includes four sisters, two brothers, four brothers-in-law, four sisters-in-law, two cousins, and other family. Five of his six siblings are either retired from service to the Iraqi government or currently working for the Iraqi government. The other family members have also worked for the Iraqi government or the Iraqi military. Applicant maintains contact with some of his relatives by internet telephone between five and ten times a year. (Tr. p. 94.) Others only four to six times a year. (Tr. p. 91.) When he calls them, he calls them all. (Tr. p. 91.) Applicant last traveled to Iraq in 2014. That is the last time he physically saw his family members. He states that he has no plans to move back to Iraq. (Tr. p. 108.)

Applicant's daughter, who represented him at the hearing, and who works for the U.S. Navy as an engineer, and holds a security clearance herself, testified on the Applicant's behalf. She stated, among many laudatory remarks, that her father is reliable, dependable and trustworthy. (Tr. pp. 24-26.)

After becoming a United States citizen, Applicant received a retirement pension from Iraq for several years. To orchestrate receipt of his pension check, Applicant's brother in Iraq would pick up the check, and wire it to the Applicant in the United States. Applicant testified that he received about \$200 bi-monthly from the Iraqi government for several years. Applicant testified that in 2014, he gave his brother power of attorney, and signed his pension over to his brother, who now receives it and uses it to care for one of their sisters who is experiencing financial hardship. (Tr. p. 79-80.)

A letter from Applicant's senior manager reflects that the Applicant is an instrumental team member in support of their mission. He is a well-qualified network engineer who has been an asset to their organization. (Applicant's Exhibit A.)

Applicant has also earned a number of awards and certifications for work-related course work that have continued to enhance his engineering abilities. (Applicant's Exhibit B.)

I have taken administrative notice concerning the country of Iraq. Iraq is a constitutional parliamentary republic. It is a dangerous place for a citizen of the United States. U.S. citizens are targets for terrorist attacks and violent atrocities directly linked to terrorist organizations in Iraq. The Iraqi government declared all of its territory liberated from ISIS in December 2017, however despite improved government control, ISIS remains a threat to public safety in Iraq through the indiscriminate use of terrorist and asymmetrical attacks. Due to the terrorism and armed conflict the U.S. Department

of State travel advisory advises that U.S. citizens in Iraq are at high risk for violence, kidnapping and unlawful killings. Numerous terrorist and insurgent groups are active in Iraq and regularly attack both Iraqi security forces and civilians. Anti-U.S. sectarian militias may also threaten U.S. citizens and Western companies throughout Iraq. Attacks by improvised explosive devices (IEDs) occur frequently in many areas of the country including Baghdad. The U.S. Government's ability to provide routine and emergency services to U.S. citizens in Iraq is extremely limited. 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. Iraq is in political turmoil and conflict as it struggles to rebuild, reconstitute the Iraqi state, maintain pressure on ISIS and rein in the Iranian-backed Shia militias that pose an enduring threat to U.S. personnel. (Government Exhibit 4.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2 describing 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 national security eligibility will be resolved in favor of 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information seeks to enter 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 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 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 relating to the guideline 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Two 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; 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's foreign family members include his four sisters and two brothers, four brothers-in-law, four sisters-in-law, and two cousins, who are citizens and residents of

Iraq. Applicant's contact with them is regular, casual and not out of the ordinary. However, based upon the large number of family he has, he is in consistent contact with them. Given their contacts with the Iraqi government, they can threaten or influence Applicant's choice of interest as a naturalized United States citizen. Most of Applicant's family in some form or fashion have worked in the past, or are currently working for the Iraqi government or the Iraqi military. This strong ongoing contact raises some serious security concerns. Under the particular circumstances here, the risk-benefit analysis is applicable, and this contact poses a security risk to the U.S. government that is not necessary. This is a situation that may manipulate or induce the Applicant to help a foreign person or government in a way that is inconsistent with the U.S. interests. Applicant has subjected himself to a heightened risk of foreign influence or exploitation or personal conflict of interest from his connection with his relatives and friends in Iraq. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 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 foreign contacts with his family and friends in Iraq clearly pose a security risk. Many members of the Applicant's family, as well as the Applicant himself have been, or are currently associated with, the Iraqi government. Although Applicant is a naturalized U.S. citizen now, his close and ongoing relationships with his family in Iraq and his close association with the Iraqi government can result in a divided allegiance. Full mitigation under AG ¶ 8(a), 8(b), and 8(c), has not been established in regard to his government association and family members and friends in Iraq. Applicant's foreign relationships poses a heightened security risk particularly relevant to this proceeding.

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 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 those guidelines, but some warrant additional comment.

Applicant's many Iraqi familial and government and foreign connections pose a significant risk to the U.S. government. Under the particular circumstances of this case, this regular ongoing contact with foreign nationals does create an unnecessary security risk not worth any benefit to the U.S. government.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has failed to mitigate the Foreign Influence security concerns.

Formal Findings

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

Paragraph 1, Guideline F: AGAINT APPLICANT

Subparagraphs 1.a: through 1.e: Against 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 national security eligibility and a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge