



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



In the matter of: )  
 )  
----- ) ISCR Case No. 18-02208  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Andrea M. Corrales, Esq., Department Counsel  
For Applicant: Leon J. Schachter, Esq.  
08/15/2019

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

**Statement of the Case**

On October 9, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence). The action was taken under Executive Order 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 or after June 8, 2017. In a response dated October 27, 2018, Applicant admitted both allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned this case on April 4, 2019. On May 2, 2019, a notice was issued setting the hearing for June 26, 2019. The hearing was convened as scheduled.

The Government offered two documents, which were accepted into the record without objection as Government exhibits (Exs.) 1-2, including a request for administrative notice. Applicant gave testimony, introduced three witnesses, and offered two documents, which were accepted into the record without objection as Exs. A and G. Ex. A is a motion for administrative notice, while Ex. B is an exhibit list incorporating the documents previously submitted with Applicant’s answer to the SOR. A transcript (Tr.) of the proceedings was received on July 11, 2019, and the record was closed. After my review of the record as a whole, I find that Applicant mitigated Foreign Influence security concerns.

## Requests for Administrative Notice

Both Applicant and Department Counsel requested that I take administrative notice of certain facts about the Federal Republic of Iraq (See Ex. A and Ex. 2, respectively) Absent objection, I have taken such notice of the facts contained in the requests. The facts are summarized in the written request and documents, and will not be repeated verbatim in this decision. Of particular note are various facts indicating Iraq is a country posing heightened risk in terms of assessment.

## Findings of Fact

Applicant is a 38-year-old linguist who has been serving in the same position for about two years. He has received multiple commendations and positive certificates of performance in that capacity, and recently was recommended for his most recent assignment. He earned an engineering degree before coming to the United States.

In 2003, during the conflict between Iraq and the United States, Applicant saw a group of *fedayeen* soldiers preparing to ambush incoming U.S. forces. He stealthily moved ahead about two miles to warn an incoming U.S. convoy of what was waiting for them ahead. (Tr. 37-38) With Applicant's help, the U.S. forces were able to detain the guerrilla commandos. Of that event, Applicant noted: "I was thinking if all the Army came to change the life [in Iraq], so we can speak, we can vote, we can have democracy in Iraq. [Do I] just watch and wait on the line and just watch and wait for things to happen or help these people to achieve the . . . noble thing they came for?" (Tr. 38) Shortly thereafter, he was asked by the head of the convoy to help them with their immediate mission. He continued to aid and support U.S. forces for some time.

In 2009, when United States troops prepared to return home from the conflict in Iraq, Applicant wanted to follow suit. He had become friends with many of the Americans he had met and wanted to live in the United States. Also, Applicant was unsure whether he would be safe remaining behind in Iraq. That year, Applicant and his brother moved to this country after his younger brother finished college. Applicant secured a green card, then bought a house and found work, first in retail, then with an association helping mentor children.

In about 2013, the brothers became United States citizens. In 2017, Applicant found he was too old to enter the military, but was eligible for a linguist position supporting the United States. To that end, he earned a competitive certificate for literary language (linguist) from a leading international linguistics entity in this country. It is in that capacity he has worked ever since.

Both of Applicant's parents are deceased. Applicant has essentially raised his younger brother since their mother died, when the sibling was 11 years old. Their emigration from Iraq took place soon after the younger sibling graduated from college. When they arrived in the United States in 2009, Applicant intentionally chose not to live in an enclave of Iraqi immigrants. He noted: "if we are going to live [here], we are going to live in this country like any people born here. We don't have to create a population

who accommodate you. . . . I wanted to . . . blend in, to feel the normal life here that we don't have . . . in Iraq." (Tr. 28)

Today, Applicant's brother is a commissioned officer in the United States military. When he is in the United States, he lives with Applicant. Applicant's spouse was born and raised in the United States. They live in the same area as four of his wife's siblings, all of whom treat Applicant as part of their immediate family. None of them are aware of what he does for work. (Tr. 19) The couple has no children.

Applicant's uncle in Iraq is or was an assistant to an intelligence official at the national level. (Tr. 58-59) In that capacity, he has worked closely with U.S. forces. (Tr. 59) He is the husband of one of Applicant's maternal aunts. At one point before Applicant moved to the United States, the uncle and Applicant worked in adjacent buildings in Iraq, helping U.S. forces. (Tr. 61) Any personal interaction was incidental to their respective work duties. Applicant later met him in February 2017 in the United States, at the home of a cousin who had come to the United States before Applicant (2007) seeking asylum. (Tr. 29)

While helping his cousin by running errands, Applicant returned to her residence one day to find the uncle had come to visit. (Tr. 23) As he had been helping his cousin for several hours and it was getting late, Applicant had to head home after 15-20 minutes. It was Applicant's first and only contact with this uncle since Applicant moved to the United States. (Tr. 23-24) The two did not discuss Applicant's work or aspirations. Applicant has no plan or intention to initiate contact with his uncle again. (Tr. 24) The two men are not close. Should, for whatever reason, the uncle initiate contact with Applicant, Applicant will report the contact appropriately. (Tr. 25)

Also in Iraq and both a citizen and resident is Applicant's aunt. She is in her mid-60s, retired from a private sector career, and is now something of a shut-in. Applicant knows very little about her. She is the mother of his American cousin, through whom he had seen his uncle in the United States. Applicant and the aunt met at the cousin's home in about 2016, a year before he met his uncle. Their meeting lasted less than 30 minutes. They also had limited social media contact in 2017. (Tr. 57) That was their last contact. This aunt is not a spouse of the uncle at issue. She knows nothing of Applicant's work. He is not close to this aunt and he has no intention of communicating with her in the future. (Tr. 57)

Applicant is very happy living his present life, with his wife, brother, cousin, and some dear neighbors nearby. He loves his home and neighborhood. His closest friend and next door neighbor is a native-born U.S. citizen, as is his wife. (Tr. 36) In rating his family on a 1-10 scale, with 10 being the most feelings of affection and connection possible, Applicant rates his brother and wife as "10," his wife's local siblings as "9," a cousin (described below) as a "7 or 8," and the uncle and aunt at issue in this matter who are remaining as citizens and residents of Iraq as "0." (Tr. 21-22) Also in the mix are his other neighbors, children he mentors and peers, with whom he has developed an affinity.

Applicant is almost half way toward paying off a mortgage on a home valued at over \$550,000. He has both a savings account and a 401(k) account here. He sends no money to family or interests in Iraq, nor does he maintain contact with any individuals in that country. (Tr. 62) Except for a week-long visit to Iraq in 2018, which he quietly took without informing his family in order to visit his mother's grave, he has not been to Iraq since 2009. He has no property, assets, or interests in Iraq, and his Iraqi passport expired in 2009.

Applicant introduced three character witnesses. The first was a lieutenant colonel with 26 years of U.S. military service who met Applicant on a deployment. The two hit it off, and the officer selected Applicant as his interpreter. (Tr. 73) Thus began a lifelong professional and personal relationship that has seen them collaborate on multiple assignments. (Tr. 74) He has been impressed by Applicant's professionalism, secrecy, and American values, and highly recommends that he be granted a security clearance.

A U.S. military sergeant with 35 years of experience also highly recommends that Applicant be granted a security clearance. The two have worked together off and on for many years. Today, they communicate a couple of times a month socially. The witness was most impressed by incidents in which Applicant helped thwart a kidnapping and a robbery. (Tr. 89) In addition, this witness worked with Applicant's uncle in Iraq during the 2003-4 and 2007-8 timeframes. He considers the uncle at issue trustworthy. (Tr. 91)

A third witness met and became friends with Applicant during the period after Applicant came to the United States, but before he became a linguist. At the association where Applicant mentored children, this witness found Applicant to be "very dependable, reliable, and trustworthy as an employee, so [they] got to know each other fairly well." (Tr. 95) As a former Federal Bureau of Investigation agent with 24 years experience, and having held a Top Secret/SCI clearance, he recommends Applicant for a security clearance. (Tr. 96) He finds Applicant to be reliable and very patriotic. (Tr. 97)

## **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 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 adjudicative goal is a fair, impartial, and commonsense decision. Under the AG, 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 in making a decision. The protection of the national security is the paramount consideration. Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.

Under the Directive, the Government must present evidence to establish controverted facts alleged in the SOR. 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 to obtain a favorable security decision. Anyone seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence that transcends normal duty hours. The Government reposes a high degree of trust and confidence in those to whom it grants access to classified information. Decisions include consideration of the possible risk the applicant may fail to safeguard such information.

### **Analysis**

Under the AG, foreign contact 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 be made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contact and interests should consider the country (Iraq) in which the foreign contact or interest is included.

The AG lists nine available disqualifying conditions. Given that the uncle and aunt residing in and citizens of Iraq at issue, I find the following apply:

¶ 7(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

¶ 7(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.

Under ¶ 8, three mitigating conditions are potentially applicable:

¶ 8(a): the nature of the relationships with foreign persons, the country 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;

¶ 8(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

¶ 8(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.

As a threshold issue, I noted that the information regarding Iraq was incorporated into this analysis above. 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.

Here, Iraq is a country of heightened risk, in part because of internal incidents of terrorism its government is grappling to contain. On the other hand, as the facts in this case concerning both Applicant and his uncle demonstrate, the United States and Iraq are working together to contain threats by terrorists and malcontents while sustaining and maintaining the government of the Federal Republic of Iraq. The courage of both these individuals in aiding this cohort cannot be readily dismissed.

Moreover, it is clear Applicant's relationship with his aunt and uncle is both casual and infrequent. Applicant does not have an established, close, familial relationship with either. His contact with both has been minimal, with his last such contact with both – whether in person or by Internet - occurring a number of years ago.

In contrast, Applicant purposefully started his new life in the United States living apart from fellow émigrés. He and his brother intentionally moved to a neighborhood full of the diversity of America and offering options not otherwise available in Iraq. Applicant's native-born wife is well-settled in their state, where they are surrounded by several of her siblings, who consider Applicant to be part of their family. Applicant's brother lives with him when he is not stationed elsewhere in his capacity as a U.S. military officer. Applicant has become a member of his community, becoming best friends with his neighbors, working as a mentor to local children, and living his American dream. Such factors highlight what little nexus Applicant still has with Iraq, specifically, the uncle and aunt at issue. Under these facts, it is highly unlikely Applicant will be placed in a position of having to choose between the interests of Iraq or his Iraqi kin and the family, work, and life he has in the United States. I find AG ¶ 8(a)-(c) are applicable.

### **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).

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. I also considered Applicant's highly credible testimony, service to the U.S. military, familial support for the efforts of the United States, and three impressive character witnesses.

Applicant's support for the United States predates his arrival to our country. He selflessly risked his life while abroad to aid the U.S. military. Since arriving on these shores, he has sought to both become a patriotic American citizen and to find work that would help him spread its ideals. His brother joined him in coming to this country and in becoming a United States citizen. He now serves in the U.S. military as an officer.

Although a resident and citizen of Iraq with whom Applicant has had negligible contact, Applicant's uncle is serving or has served in a capacity within the Iraqi government that has assisted the United States in its aims to provide support in that land. Ironically, one of Applicant's references speaks highly of Applicant's uncle, apparently knowing him better than does Applicant, himself. Regardless, Applicant has had no interaction with either his uncle or aunt since 2017, and he has no intention to reinitiate contact with either. They are far outside the sphere of his immediate family, with whom he thrives in this country while living out his aspiration of becoming a productive U.S. citizen. Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude foreign influence 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
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Subparagraphs 1.a-1.b:	For Applicant
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### **Conclusion**

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

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Arthur E. Marshall, Jr.  
Administrative Judge