



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



In the matter of:)
)
) ISCR Case No. 18-02207
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: Pro se

March 25, 2019

Decision

LOKEY ANDERSON Darlene D., Administrative Judge:

Statement of the Case

Applicant submitted his Electronic Questionnaire for Investigations Processing dated November 13, 2017. On October 22, 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. The action was 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.

Applicant answered the SOR on November 28, 2018. He requested that his case be decided by an administrative judge on the written record without a hearing. On December 19, 2018, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing four Items, was mailed to Applicant on December 20, 2018, and received by him on January 11, 2019. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant did not respond to the FORM. Applicant did not object to Items 1 through 4, and they are admitted into evidence, hereinafter referenced as Government Exhibits 1 through 4. Based upon a review of the pleadings, and exhibits, national security eligibility for a security clearance is denied.

Procedural Rulings

The Government requested I take administrative notice of certain facts relating to the country of Iraq. Department Counsel provided a nine page summary of the facts, supported by thirteen Government documents pertaining to Iraq, identified as HE 1. 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 32 years old, and is not legally married, but has a cohabitant, and a daughter. He has also completed some college, and is currently applying for a position as a linguist. A security clearance is required in connection with his employment with a defense contractor.

Applicant was born in Bagdad, Iraq in July 1986. He grew up in Iraq and left in 2005 to go to Syria, because it was safer for him. He also had a job opportunity in Syria working for a construction company. In November 2010, Applicant came to the United States as a refugee through the International Organization for Migration. He traveled from Iraq to Jordan, New York and Phoenix. As an Iraqi national translator working with the United States Army, his life was threatened, and he was given an opportunity to come to the United States. On August 18, 2016, Applicant became a naturalized U.S. citizen. (Government Exhibit 3.)

Applicant's mother and father are citizens and residents of Iraq. His father is retired from the Iraqi Ministry of Water Resources. He was a well driller. He is no longer affiliated with the foreign government. Applicant's mother has never worked

outside of the home to his knowledge. Applicant also has five brothers and one sister who are citizens and residents of Iraq. Two of his brothers are employed by the Iraqi police. One of his brothers is employed by the Iraqi Counter-Terrorism Service. Another brother is a self-employed electrician, and another brother is unemployed. His sister is a school student. From November 2010 to the present, Applicant maintains contact with his family in Iraq and speaks with them about once a month. In 2013, he traveled to Iraq to visit them. (Government Exhibit 3.)

Applicant's spouse/cohabitant was also born in Bagdad, Iraq. She is a citizen of Iraq and a permanent resident of the United States. She and Applicant were married in a Muslim ceremony in the United States. Since their marriage is not legal in the United States, Applicant did not believe he had to list her on his security clearance application. (Government Exhibit 4.)

Applicant's mother and father-in-law are citizens of Iraq and permanent residents of the United States. Applicant maintains contact with his in-laws weekly by telephone or in person. He also has other relatives in Iraq that he maintains weekly contact with including an aunt, a brother-in-law, and two sister-in-laws that were not listed on his security clearance application but developed during the security clearance investigation. (Government Exhibit 4.)

I have taken administrative notice of the information provided concerning the Federal Republic of Iraq. Iraq is a federal parliamentary republic. The President of Iraq is indirectly elected by a Council of Representatives to serve a 4-year term (eligible for a second). Although Iraq is an ally of the United States, 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. The U.S. State Department warns that U.S. citizens in Iraq are at high risk of violence and kidnapping and advises U.S. citizens to not travel to Iraq. The current travel advisory level is Level 4. Do not travel. Within areas under the Islamic State of Iraq and Syria (ISIS) control, the Iraqi government has little or no ability to exercise control and ensure public safety. Arbitrary or unlawful killings are rampant. People belonging to religious and ethnic minorities, and people who express support for the government of Iraq or Western institutions, are at grave risk in these areas and may face kidnapping, imprisonment or execution. Terrorist groups continue to mount a large number of attacks throughout the country. Iraq is likely to face a lengthy period of 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 US personnel. ISIS will remain a terrorist and insurgent threat and the group will seek to exploit Sunni discontent to conduct attacks and try to regain Iraqi territory. Violence continues largely fueled by the actions of ISIS. (HE 1).

A number of foreign contacts have been omitted from Applicant's security clearance application because Applicant claims that he either overlooked the entry by mistake, he did not understand the question, or thought he did not have to list them. (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 mother and father, five brothers and a sister who are citizens and residents of Iraq. Applicant's answer to the SOR, which is the only evidence he presented, failed to appropriately mitigate the SOR allegations. Based upon the evidence presented, his foreign family connections clearly raise serious security concerns and pose a heightened risk of foreign exploitation, inducement, manipulations, pressure, or coercion. Given the volatile nature of Iraq, and the employment of his brothers in such high-risk government positions, place Applicant in a particularly precarious position. There could easily be a conflict of interest between Applicant's obligation to protect classified or sensitive information and his desire to help his family by providing information. Under the particular circumstances here, the risk-benefit analysis is applicable, and this contact as well as the nature of the relationships pose a significant security risk to the U.S. government that is not necessary. Applicant has subjected himself to a heightened risk of foreign

influence or exploitation or personal conflict of interest from his ongoing connection with his family in Iraq.

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; and

(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.

Applicant's foreign family members and the nature of his relationships with his family clearly pose a security risk. There is a great potential for a conflict of interest. Although Applicant is a naturalized U.S. citizen, his relationship with his family in Iraq is close and ongoing, and can possibly result in divided allegiance. Insufficient mitigation under AG ¶ 8(a), 8(b), and 8(c), has been established in regard to his family members. The relationship 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 familial Iraqi connections pose a significant security risk to the U.S. government that was not mitigated under the particular facts presented in this case.

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 B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	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