



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 18-02343

**Appearances**

For Government: Brittany Muetzel White, Esq., Department Counsel

For Applicant: *Pro se*

08/09/2019

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**Decision**

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Curry, Marc, Administrative Judge:

Applicant mitigated the foreign influence security concerns generated by his family members who are citizens and residents of Iraq, and his mother's property in Iraq. Clearance is granted.

**Statement of the Case**

On November 19, 2018 the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) alleging security concerns under Guideline B (foreign influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; DOD 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*, effective June 8, 2017. The SOR further informed Applicant that, based on information available to the Government, DOD adjudicators could not make the affirmative finding that it is clearly consistent with the interests of national security to grant or continue his security clearance. It recommended that his case be submitted to an administrative judge for a determination whether his clearance should be granted, continued, denied, or revoked.

On December 19, 2018, Applicant responded to the SOR, admitting all of the allegations, and requested a decision on the written record instead of a hearing. On March 11, 2019, Department Counsel prepared a File of Relevant Material (FORM). In the FORM, Department Counsel withdrew subparagraphs 1.a and 1.b, and added subparagraph 1.h. (FORM at 2) Applicant received a copy of the FORM on March 22, 2019, and was notified of his opportunity to prepare a response and to admit or deny the supplementary allegation set forth in subparagraph 1.h.. He did not respond, consequently, I will construe his non-answer to subparagraph 1.h as a denial. On June 14, 2019, the case was assigned to me.

I incorporated the Government's proposed exhibits, marked as Items 1 through 6, into the record. Also, I have taken administrative notice of the facts set forth in 11 documents submitted by the Government, marked as Items I through XI.

### **Findings of Fact**

Applicant is a 34-year-old married man with four children. He was born, raised, and educated in Iraq, immigrating to the United States in 2008, and becoming a naturalized U.S. citizen in 2013. (Item 3) Since 2017, he has worked for a defense contractor as a linguist.

Applicant has a history of working in positions supporting the United States and its allies' interest in Iraq. From 2005 to 2008, he was a security guard for a defense contractor of a coalition country. In this capacity, he provided protection for several senior-level U.S. and coalition officials. (Item 2 at 2) He carried a gun and experienced combat multiple times. (Item 4 at 5)

Shortly after immigrating to the United States in 2008, Applicant returned to Iraq to work as a translator, where he worked for the next three years through December 2011. (Item 3 at 19) This job was dangerous also, as three of his fellow translators were killed during this period. (Item 3 at 11)

Applicant's mother and two sisters are citizens and residents of Iraq. His father is deceased. His sisters are students, and they live with their mother. (Item 2 at 2) His mother's occupation is unknown from the record.

Applicant's mother owns two homes in Iraq that together are worth approximately \$950,000 USD. (Item 2 at 1) She lives in one of the properties with her daughters. Because of the political climate in Iraq, Applicant has no interest in any ownership rights that he may one day receive through inheritance.

Applicant's mother, together with several other families, own 300 acres of farmland in Iraq that is worth approximately \$20 million. (Item 2 at 1) His mother's family has owned this land for hundreds of years. Applicant believes that his mother owns approximately 150 acres, but is unsure, as no transfers have ever been legally recorded. (Item 2 at 1, Item 6 at 2) The number of family members who share

ownership and the lack of clear title would complicate any effort to sell any interest in it, making its practical value much less than the estimated value. (Item 2 at 1) There is no record evidence of what, if any, interest that Applicant has in this property.

Between 2005 and 2010, Applicant provided \$70,000 in financial support to his mother. Much of this money was spent repairing her second home, which was damaged during the sectarian violence that was then occurring. (Item 2 at 1)

Applicant's brother is a citizen and resident of Iraq. (Item 5 at 24) He works for a private security company as a visa coordinator. Applicant communicates with him weekly. (Item 5 at 24)

Applicant's wife became a U.S. citizen since the security clearance process was initiated. His children are now U.S. citizens by virtue of him and his wife becoming U.S. citizens. (Item 2 at 1)

### **Administrative Notice**

Iraq is a constitutional parliamentary republic. (HE I at 1) Although the Iraqi government has made impressive gains over the years towards curbing terrorism, significant problems remain, as the Islamic State of Iraq and Levant (ISIL) continues to exert influence in parts of the country. (HE III at 1; HE VII at 2) The U.S. Embassy warns that U.S. citizens are at high risk for kidnapping and violence, and to avoid all but essential travel to Iraq. (Item II at 1) The U.S. government considers the potential threat to U.S. government personnel in Iraq to be serious enough to require them to live and work under strict security guidelines. (HE III at 2)

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An

administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

## **Analysis**

### **Guideline B, Foreign Influence**

Under this guideline, “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.” (AG ¶ 6) Iraq has made significant strides towards stability over the past few years. However, terrorism remains a problem, anti-western sentiment remains high, and banditry remains rampant, particularly against U.S. interests. These pervasive problems, trigger the application of the following disqualifying conditions, vis a vis Applicant’s relatives in Iraq, under AG ¶ 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
- (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.

Although Applicant’s mother’s property interests in Iraq heighten his vulnerability to coercion through her, there is no record evidence that Applicant has any ownership interest in these properties. Whether he may one day inherit property in Iraq is not relevant to the foreign influence analysis, as such a situation “is full of possibilities that may or may not occur.” (ISCR Case No. 97-0403 (May 13, 1998) at 3) Consequently, AG ¶ 7(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,” does not apply.

Applicant has a history of supporting U.S. interests in Iraq under dangerous conditions, first, as a security guard, and later, as a translator. Both jobs were dangerous, as he faced combat a number of times while working as a security guard, and lost several fellow translators who worked with him when he served as a translator.

Having risked his life to further U.S. interests in Iraq, I am confident that Applicant would resolve any potential conflict generated by his relatives, living in Iraq, with the U.S. interest. AG ¶ 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 nominal, 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,” applies. I conclude Applicant has mitigated the foreign influence security concern.

### **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 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.

I addressed the whole-person concept factors in my analysis of Applicant’s history of service in the U.S. interest and how it minimizes his vulnerability to coercion.

### **Formal Finding**

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.b:	WITHDRAWN
Subparagraphs 1.c – 1.h:	For Applicant

## **Conclusion**

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

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Marc Curry  
Administrative Judge