



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



In the matter of:)
)
) ISCR Case No. 18-02548
)
Applicant for Security Clearance)

Appearances

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

04/09/2019

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline B, foreign influence and under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On November 1, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence and Guideline F, financial considerations. 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 within the DOD on June 8, 2017.

Applicant answered the SOR on November 30, 2018, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the

Government's file of relevant material (FORM) containing five Items, and it was received by Applicant on February 19, 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 receipt of the FORM. Applicant submitted a response to the FORM. He objected to consideration of an account that he no longer held jointly with his wife and disputed a comment that he failed to respond to an email. His objections are sustained, and his corrections are noted. No other objections to the Government's evidence were made. Items 1 through 5 are admitted into evidence. As part of his response to the FORM, Applicant provided documents that are marked as Applicant's Exhibits (AE) A through G. There was no objection to the exhibits, and they are admitted into evidence. The Defense Office of Hearings and Appeals (DOHA) assigned this case to me on March 27, 2019.

Request for Administrative Notice

In the FORM Department Counsel submitted Item 6, which requested 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 that were provided with the FORM. The facts are summarized in the Findings of Fact, below.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.c through 1.e, and 2.a. He denied the SOR allegations in ¶¶ 1.a, 1.b, and 2.b. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 39 years old. He was born in Iraq and earned a college degree there in 2003. He married his wife, an Iraqi citizen, in 2012. They have five young children. It is unknown where his eldest child was born. His four younger children were born in the United States. He is presently seeking employment with a federal contractor.¹

Applicant worked for a U.S. contractor in Iraq from 2003 to 2006. In January 2010, he was granted a special immigration visa and immigrated to the United States. In his September 2017 Questionnaire for National Security Position (SF 86), he disclosed that he lived in the United States from 2010 to April 2016. He traveled back and forth to Iraq numerous times during this period. Applicant became a naturalized citizen of the United States in April 2016 and obtained a U.S. passport the same month. He then moved back to Iraq in April 2016. Applicant also disclosed that he still held an Iraqi passport (which will expire in 2022) that he intended to relinquish to his employer after his counterintelligence screening interview (CSI). He stated in his SF 86: "After gaining my U.S. citizen[ship] in May 2016, I have no use for the passport and will relinquish to [prospective employer] as I have renounced the Iraqi citizenship at the Naturalization

¹ Item 3; AE A.

Ceremony.”² In February 2018, Applicant was interviewed by a government investigator. Noted in the report was Applicant’s foreign travel and date stamps in both his U.S. passport and Iraqi passport. His Iraqi passport has entrance to Iraq stamps on May 2016, July 2016, February 2017; October 2017, and November 2017, subsequent to becoming a U.S. citizen.³

Applicant returned to the United States for a week in September 2017, and again in approximately October to November 2017, to process his wife and son’s immigration paperwork and for an interview. He then returned to Iraq and lived there from November 2017 to February 2018.⁴

Applicant disclosed on his September 2017 SF 86 that his wife is a citizen and resident of Iraq. During Applicant’s February 2018 CSI interview, he told the interviewer that he moved back to Iraq because his wife and son wanted to because the cultural changes were tough on them. He said he would move back to the U.S., but wanted to give his wife some more time before making the move back. In his CSI documents, he confirmed at that time that his wife was a citizen and resident of Iraq. Applicant indicated in his November 2018 answer to the SOR that his wife is a permanent resident of the United States, and that she resided in Iraq. He said his son was a U.S. citizen residing in Iraq. Applicant said in his February 2019 FORM response that his wife was living in the United States. It is unknown when she moved back, and what her intentions are regarding remaining in the United States. Applicant did not provide information as to when his wife became a permanent resident and when his son became a U.S. citizen. He did not provide corroborating documents as to their status.⁵

Applicant’s mother and two brothers are citizens and residents of Iraq. In his CSI documents, he disclosed his mother is a homemaker. One brother is an assistant teacher and the other is self-employed and has a cosmetic store.⁶

Applicant disclosed during his February 2018 background interview that his family in Iraq is very wealthy, and he receives approximately \$20,000 every two to six months for living expenses. He has received money transfers since 2012 when he married. Applicant has a saving and checking account with a U.S. bank that has a balance of about \$5,500. He also has an Iraqi bank account that he uses to transfer money to his U.S. accounts. He told the investigator that he had transferred \$10,000 from his Iraqi bank account to his U.S. account when he was in Iraq. The funds were from rent payments from the various rental properties he owns.⁷

² Item 3. It is noted that Applicant said he became a U.S. citizen in May 2016, which differs from the date he disclosed on his SF 86.

³ Items 3, 4, 5.

⁴ Items 4, 5.

⁶ Items 3, 4, 5.

⁷ Item 4.

Applicant disclosed that he owns a residence in Iraq where his immediate family resides, and it is paid for in full. He purchased it in 2013 for his family and intended on keeping it for when he visits Iraq. When interviewed for his CSI, he estimated its value at \$120,000. In his SOR answer, he indicated that its value depends on the real estate market, so it could be valued less.⁸

Applicant co-owns with his mother and brothers a commercial property that has 10 apartment units. The apartments are rented, and he receives approximately \$800 a month in revenue. He referred to this as residual income. He estimated the property is valued at approximately \$500,000. He inherited the property when his father passed away in January 2018.⁹

Applicant co-owns with his mother and brothers a three-building compound. His mother and brothers live in one residence, and they rent the other two residences. They receive rental income of approximately \$1,800 monthly. The compound is valued at approximately \$2,500,000.¹⁰

Applicant disclosed that from 2007 to 2009, he was employed full time by an Iraqi company. He told the government investigator that he was still employed by the same employer, and he provides services at least once a quarter or as needed. He provided his services both electronically and in person. He completes about five to six tasks for the company per year and receives approximately \$25,000 in cash compensation annually.¹¹

Applicant disclosed that he was employed by a consulting company in Iraq from April 2016 to the present on a part-time basis. He is compensated about \$2,000 a month for his services. He worked from April 2016 to August 2017 for the company while in Iraq. From August 2017 until at least the date of his interview in February 2018, he was employed by the company and provided services electronically and in-person. Applicant disclosed that while living in the U.S., he was self-employed from January 2010 to April 2016. He had various commercial jobs and a business where he purchased and sold furniture. He completed these duties from home. He did not have a license or pay taxes for his jobs in the U.S. He was paid in cash.¹²

⁸ Items 4, 5.

⁹ Items 4, 5.

¹⁰ Items 3, 4, 5. Applicant did not disclose any foreign financial or real estate interests in his SF 86. I have not considered any derogatory information that was not alleged for disqualifying conditions. I may consider it when making a credibility determination, in the application of mitigating conditions, and in my whole-person analysis.

¹¹ Items 4, 5.

¹² Items 3, 4, 5.

Applicant also told the government investigator that he was unemployed from April 2012 to April 2016.¹³ He filed past federal income tax returns in 2015 and learned he owed \$20,000 in federal taxes. In his SOR answer, he admitted he failed to timely file his 2011, 2012, 2013, and 2014 federal income tax returns. He said he made payment arrangements with the IRS and had an installment agreement to pay \$230 a month. He was questioned as to why with his financial resources he did not pay the whole amount owed. He told the investigator he preferred the settlement agreement.¹⁴

In his answer to the SOR, Applicant stated that the \$16,000 federal income tax debt was reduced to \$9,396. He provided copies of IRS transcripts from November 2018. They confirm that he filed his 2014 federal income tax return in April 2015.¹⁵ He provided a transcript for tax year 2010, which is not alleged.¹⁶ He also provided 2011 and 2012 transcripts that show he filed these tax year returns in August 2015. As of the date of the transcripts, the balances owed were \$420 for 2010; \$4,589 for 2011, and \$4,846 for 2012. Applicant did not provide a tax transcript for 2013. The transcripts also reflect that Applicant entered into an installment agreement with the IRS in 2015, and he made inconsistent payments through 2018. His 2014 transcript reflects some payments were redirect to his 2010 tax liability. The transcripts also reflect that tax years 2011 and 2012 were no longer in an installment agreement.¹⁷

In his FORM response, Applicant provided a document from the IRS from December 2018. It stated that the IRS had accepted an installment agreement from Applicant to pay \$230 monthly. It reflected it included tax years 2010, 2011, 2012, and 2014. Also provided was proof of a payment made to the IRS in December 2018 for \$230. Applicant stated in his response that his tax-debt balance was now approximately \$2,739 because he was owed a refund of \$6,090 for tax year 2018 that was applied to his tax balance. Applicant did not provide corroborating documents to show his current tax balance.¹⁸

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

¹³ Item 4. It is noted that Applicant's statements to the investigator about his employment are inconsistent.

¹⁴ Items 4, 5.

¹⁵ It is alleged that Applicant's 2014 federal tax returns were filed untimely. The IRS documents provided show the 2014 return was filed timely.

¹⁶ Item 4. Applicant's 2010 federal income tax return was filed in July 2015. I will not consider this for disqualifying purposes as noted above because it was not alleged.

¹⁷ Item 2.

¹⁸ Item 4; AE A, D, E, F.

extremely limited given the security environment. The Islamic State of Iraq and Syria (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. ISIS is also responsible for human rights abuses. 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.

Policies

When evaluating an applicant's suitability for national security eligibility, 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 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; and

(f) substantial business, financial, or property interest 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.

Applicant's wife and son are citizens of Iraq. There was insufficient evidence to find that Applicant's wife is now a permanent resident and his son is a citizen of the United States. It appears they may now be residing in the United States. It is unknown when she moved. Applicant's mother and two brothers are citizens and residents of Iraq. Applicant's family provides him with substantial financial support for living expenses. Applicant and his family own properties in Iraq, and he receives substantial income from their properties. Applicant also owns a home in Iraq that is used for his immediate family. Applicant's wife's citizenship status, his family residing in Iraq, and his financial interests create a heightened risk and a potential foreign influence concern. There is an articulated heightened risk associated with having ties to family members in Iraq, due to the activities of terrorist organizations and insurgents operating within its borders. The evidence is sufficient to raise these disqualifying conditions.

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:

(a) the nature of the relationship 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 and interests of the U.S.;

(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;

(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; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

None of the above conditions are mitigating in this instance. Applicant is obviously in close contact with his wife, son, mother, and brothers. He receives substantial income from his family for living expenses. He also receives substantial income as a joint property owner of real estate in Iraq, with his mother and brothers. The property values are significant. I cannot find his property interests in Iraq are unlikely to result in a conflict and could not be used to influence, manipulate or pressure Applicant, especially considering that the two more expensive properties are owned jointly with his family and are where they reside. Applicant continues to have substantial business ties to Iraq, working for companies there. Due to Applicant's close relationship with his family and the terrorist threats and human rights abuses in Iraq, I cannot find it is unlikely he would be placed in a position of choosing between them and the interests of the United States.

Applicant failed to demonstrate deep and longstanding loyalties to the United States. Applicant did not provide evidence of property interests in the United States and there is insufficient evidence on assets, or physical or emotional bonds to the United States. There is insufficient evidence that he has ties to a community in the U.S. Shortly after becoming a U.S. citizen, he moved back to Iraq where he lived with his wife in the family home he owns. His income is derived from rental properties in Iraq. Without more information, it cannot be determined that Applicant would resolve any conflict of interest in favor of the U.S. interest.

Guideline F: Financial Considerations

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides conditions that could raise security concerns. The following is potentially applicable:

(b) unwillingness to satisfy debts regardless of ability to do so; and

(g) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant failed to timely file his 2011 through 2013 federal income tax returns. He owed approximately \$16,000 in federal income taxes. He arranged an installment agreement with the IRS. The evidence supports he had the financial means to make the monthly \$230 payments, but his payments were inconsistent. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant failed to timely file federal income tax returns for 2011 through 2013. In 2015 the returns were filed, and he established an installment agreement with the IRS. Based on the documents he provided he made inconsistent payments. He reestablished an installment agreement with the IRS in December 2018, and made a payment. He said his tax liability was reduced when his 2018 tax refund was applied to his prior year tax debts. Applicant failed to provide corroborating documents to substantiate his statements. AG ¶ 20(a) does not apply. I have considered that Applicant might have been unfamiliar with the requirements to file his tax returns because he had recently immigrated to the

United States. However, after he did file them, he failed to adhere to the installment agreement he had with the IRS. He provided evidence that he had the financial resources to make the monthly payments. I find he failed to act responsibly. AG ¶ 20(b) does not apply. There is no evidence Applicant received financial counseling. AG ¶ 20(c) does not apply. Applicant initially began to pay his tax liability through an installment agreement with the IRS, but then failed to follow through. AG ¶ 20(d) does not apply. In December 2018, Applicant reestablished an installment agreement with the IRS to pay his past tax liability. He provided proof that he made the initial payment. AG ¶ 20(g) applies.

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 Guidelines B and F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 39 years old and has been a naturalized U.S. citizen since 2016. He worked for a U.S. contractor in Iraq from 2003 to 2006 and was granted a special immigration visa. I have considered his service to the United States. Applicant maintains significant emotional, financial and business ties to Iraq. He did not provide sufficient evidence to show he has substantial ties to the United States. He failed to mitigate the security concerns under Guideline B, foreign influence. Applicant owed federal income taxes for past tax years. Although he arranged with the IRS in 2015 to pay them through an installment agreement, he made inconsistent payments, despite having the financial resources. He failed to provide documents to corroborate the current balance owed on his past-due taxes. He recently reestablished an installment agreement, but his actions are insufficient to mitigate the financial considerations security concerns under Guideline

F. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance.

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:	AGAINST APPLICANT
Subparagraphs 1.a-1.e:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a-2.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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge