



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



In the matter of:)
)
) ISCR Case No. 18-02978
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: Jeff Gard, Esq.

09/11/2019

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the security concerns under Guideline B, foreign influence. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On January 9, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B. The DOD CAF acted 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 implemented on June 8, 2017 (AG).

Applicant answered (Ans.) the SOR on February 11, 2019, and requested a hearing before an administrative judge. On April 24, 2019, the case was assigned to me. On May 23, 2019, the Defense Office of Hearings and Appeals (DOHA) notified

Applicant that the hearing was scheduled for July 23, 2019. I convened the hearing as scheduled. Government exhibits (GE) 1 through 4 were admitted in evidence without objection. The Government's exhibit list and request for administrative notice were marked as hearing exhibits (HE) I and II. Applicant testified and offered exhibits (AE) A through J, which were admitted without objection. DOHA received the transcript (Tr.) on July 31, 2019.

Procedural Rulings

I took administrative notice of facts concerning Iraq. Department Counsel provided supporting documents that verify, detail, and provide context for the requested facts. The specific facts noticed are included in the Findings of Fact.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. Usually administrative notice in ISCR proceedings is accorded to facts that are either well known or from U.S. Government reports. (See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986); Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice))

Findings of Fact

In Applicant's answer to the SOR, he admitted some of the allegations with explanations, and denied others. His admissions are incorporated into the findings of fact. After a thorough and careful review of the evidence, I make the following additional findings of fact.

Applicant is 54 years old. He was born in Iraq in 1965. He earned two bachelor's degrees from Iraqi universities. He immigrated to the United States in 2008. He became a U.S. citizen in 2014. His wife and children are U.S. citizens and residents. (Tr. 22, 29-30; GE 1)

The SOR alleged that Applicant's sister, brother, mother-in-law, and father-in-law are residents and citizens of Iraq. It also alleged Applicant had an inappropriate personal relationship with foreign military personnel while working in Iraq in December 2017 and he had inappropriate contact with an Iraqi staff major general with whom he served in the Iraqi Army.

Applicant served as a captain in the Iraqi Army (mandatory) from 1991 until he deserted in 2003 just before the start of Operation Iraqi Freedom (OIF). He deserted because he did not support the regime and refused to fight for it. After the war started, he volunteered to assist U.S. forces as a linguist. He worked with various units, including a military police unit at a forward operating base. He was often put in dangerous situations. When it became too dangerous for him and his family to remain in

the area, he left for Jordan in 2006. In 2008, with the help of a U.S. Army commander who he had worked for, Applicant gained refugee status and immigrated to the United States. In late 2008, he served as a linguist instructor for two months before deploying to Iraq in January 2009 working as a contractor linguist for U.S. forces. He remained in that position for over two years until March 2011. He returned to the United States because of his son's medical needs. In 2016, he was hired to be a cultural role-player for the Army at one of its training posts. He continued with that position until he was hired as a linguist in 2017 for a position in Iraq. He remained in that position until January 2019. In this last linguist position, he served for over a year as the primary linguist for the U.S. general (G1) who was the director of an important command position. (23-25, 29-30; AE 1-2) G1 said this about Applicant:

[Applicant] readily accepted dangerous assignments accompanying me to the battlefield on multiple occasions: . . . and multiple other sites where accurate communications, physical endurance, and bravery were prerequisites. . . . He had a place of trust on [my] staff in Baghdad and it functioned more smoothly while he was there. (Ans.; AE B)

The successor general (G2) hand-picked Applicant to be his personal linguist. He said this about Applicant:

[Applicant] quickly proved to be a trusted advisor, expertly helping me navigate the minute intricacies of Iraq's military culture. He spent numerous long nights with staff Lieutenant General [A], staff Major General [H] and myself providing superb translation as we discussed the future of Iraqi Security Forces and the combined campaign against the Islamic State of Iraq and Syria. (Ans.; AE D)

Applicant denied having any type of inappropriate relationship with any Iraqi general or other officer as alleged. Applicant's denials are partially corroborated by information provided by G1 and G2. Applicant pointed out that he communicated with the Iraqi generals often, but always at the direction of his U.S. general. He also denied any other type of wrongdoing, such as taking unauthorized travel. The source of these allegations comes from a U.S. Army counterintelligence memorandum from April 2018. The conclusory memorandum does not state the source of the information. Additionally, the information was not deemed important enough to open an investigation into Applicant's alleged actions. Applicant theorized that the source of the damaging counterintelligence information could have been other disgruntled or jealous linguists. (Tr. 33-35; 43; Ans.; GE 3-4; AE B, D)

G1 addressed Applicant's working relationship with the Iraqi generals and the specter of co-worker jealousy in his letter of support:

His relationship with me and other superior officers in the [command center] due to his consistent superior performance caused occasional jealousy-driven friction in the interpreter pool. Because he earned the trust

of both the Iraqi officers (he himself is a former officer of the Iraqi Army) and senior coalition officers, he had access to both and occasionally delivered messages from one to the other when we were most busy. To a jealous eye, this practice may have appeared to be an inappropriate relationship. The Iraqi Chief of staff, MG H, would ask [Applicant] to relay to me his desire for a meeting, and I would do the same. In similar fashion, MG A, my close counterpart and a critical figure in the post precarious phases of the Iraqi defeat of ISIS, also trusted [Applicant] to interpret and convey precise, timely, and sensitive communication at the highest Coalition/Iraqi government levels. . . . I never witnessed any of the alleged transgressions – unauthorized travel, misplaced loyalty, or condescending behavior. (AE B)

When G2 assumed the command position after G1's departure, he also had an opportunity to work with and observe Applicant perform his linguist duties. He described his dealings with Applicant as follows:

Throughout his tenure, I often tasked [Applicant] to converse with Lieutenant General A and staff Major General H on my behalf. He did so with utmost distinction, adhering strictly to my intent. Never once did he falter in this task, and he always provided timely, succinct responses. I have never doubted [Applicant's] dedication to the United States, our current mission in Iraq, or his profession[alism]. Judging him solely upon the professional that he is, he has earned my utmost trust.

Applicant was wounded twice while performing his duties working for U.S. forces. He owns no property in Iraq. His wife and children live and go to school in the United States. Applicant would put the interests of the United States first regardless of the circumstances. (Tr. 27-28, 35, 48)

The current status of Applicant's relatives listed in the SOR is as follows:

1. Applicant's brother and sister. Applicant has no ongoing relationship with his siblings who are citizens and reside in Iraq. . He has not spoken to them in over 10 years. He does not know where they reside in Iraq. His estrangement is due to a family dispute years ago. (Tr. 31, 47; Ans.)

2. Applicant's mother-in-law and father-in-law. Applicant's father-in-law is deceased. His mother-in-law is a citizen and resident of Iraq. She is in her 70s and Applicant does not keep in touch with her. She is unaware of what Applicant does or the nature of his work. (Tr. 32; Ans.)

Character Evidence.

In addition to the letters from G1 and G2, Applicant supplied character references from other military officers, a noncommissioned officer (NCO), and a fellow Iraqi civilian linguist. All described Applicant's linguistic skills and other positive character traits, such as honesty and being a team player, which made him a valuable asset. His abilities were deemed so vital that he was denied his entitled leave during a critical time. G1 later asked that his leave be restored. Several noted that Applicant was disliked by some of his peers whose complaints about him were meritless. Several officers recommended that his clearance be restored. (AE A-J)

Administrative Notice.

The U.S. State Department warns U.S. citizens against travel to Iraq as travel within the country remains dangerous. 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. 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. The Islamic State of Iraq and Levant (ISIL) remained the greatest terrorist threat globally, maintaining a formidable force in Iraq and Syria. (HE II)

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 overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a careful weighing 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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.”

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 about 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 explains the security concern about “foreign contacts and interests” as follows:

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.

AG ¶ 7 indicates conditions that could raise a security concern and may be disqualifying 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;

(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; and

(d) counterintelligence information, whether classified or unclassified, that indicates the individual's access to classified information or eligibility for a sensitive position may involve unacceptable risk to national security.

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member or friend is associated with or dependent upon the government, the country is known to conduct intelligence collection operations against the United States, or the foreign country is associated with a risk of terrorism. The relationship between Iraq and the United States places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationships with his relatives and friends living in Iraq does not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his relatives and friends living in Iraq who might be coerced by governmental entities, or pressured to assist Iraq.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." (ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004)) Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields.

While there is no evidence that intelligence operatives from Iraq seek or have sought classified or economic information from or through Applicant or his relatives living in Iraq, it is not possible to rule out such a possibility in the future. AG ¶¶ 7(a) and 7(b) apply based upon Applicant's family members who are residents and citizens of Iraq. The counterintelligence letter alleging possible improprieties by Applicant raises the issue of unacceptable risk. AG ¶ 7(d) applies.

AG ¶ 8 lists conditions that could mitigate foreign influence security concerns, 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 U.S.;

(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

(d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee.

Applicant credibly testified that he has no contact with his Iraqi siblings and limited contact with his Iraqi mother-in-law. He presented sufficient evidence to establish that it is unlikely that he would be placed in a position to choose between the interest of his relatives living in Iraq and those of the United States. He already has demonstrated that he would put the United States' interests first when he worked as a linguist for U.S. forces on three different occasions. AG ¶ 8(a) applies.

Applicant has met his burden to establish his "deep and longstanding relationships and loyalties in the U.S." He became a U.S. citizen in 2014. He currently works and lives in the United States with his wife and two children. He worked as a linguist in Iraq from 2003 to 2006, from 2009 to 2011, and from 2017 to 2019. He performed different missions for U.S. forces where he earned praise for his service while in harm's way. He was twice injured performing his duties. He performed his linguistic duties for U.S. general officers. The evidence supports that Applicant has longstanding ties to the United States and would resolve any conflict of interest in favor of the United States. AG ¶ 8(b) applies.

The allegations concerning Applicant's possible inappropriate relationship with Iraqi senior officers were rebutted by Applicant's evidence explaining the nature of his duties and corroborated by U.S. personnel that ordered Applicant to directly communicate with high-level Iraqi officers. Evidence also supports that the allegations may have been leveled by persons with bad motives arising from personal jealousy of Applicant. AG ¶ 8(d) 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. The circumstances tending to support granting Applicant's clearance are more significant than the factors weighing towards denying his clearance. I considered the comments by Applicant's U.S. military supervisors, who attested to his dedication and commitment to U.S. forces. I also considered his strong ties to this country as a linguist serving in harm's way while assisting U.S. forces. He has demonstrated his longstanding loyalty to the United States. Therefore, he provided sufficient evidence to mitigate the security concerns.

Overall the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that the security concerns arising under Guideline B, foreign influence, were 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

Subparagraphs 1.a: - 1.e: For Applicant

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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Robert E. Coacher
Administrative Judge