



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



In the matter of:)
)
) ISCR Case No. 19-00438
)
)
Applicant for Security Clearance)

Appearances

For Government: Brittany White, Esq., Department Counsel
For Applicant: *Pro se*

09/16/2019

Decision

DAM, Shari, Administrative Judge:

Applicant did not mitigate the foreign influence security concerns arising from his connections to family members who are citizens and residents of Iraq. National security eligibility for access to classified information is denied.

History of Case

On July 19, 2018, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On February 28, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective on June 8, 2017.

On April 28, 2019, Applicant answered the SOR in writing and requested a hearing (Answer). The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on June 27, 2019. DOHA issued a Notice of Hearing on July 12, 2019, setting the hearing for August 14, 2019. At the hearing, Department Counsel offered Government Exhibit (GE) 1 into evidence. Applicant testified. He did not offer any exhibits. DOHA received the hearing transcript (Tr.) on August 21, 2019.

Procedural Ruling

I take administrative notice of facts concerning Iraq. Those facts are set out in the Government's Request for Administrative Notice for the Federal Republic of Iraq. (Hearing Exhibit (HE) 1). Applicant had no objection to that request. The facts administratively noticed are limited to matters of general knowledge and not subject to reasonable dispute. The pertinent facts are set out in the Findings of Fact, below.

Findings of Fact

In his Answer, Applicant admitted the six allegations contained in the SOR. His admissions are incorporated into the findings of fact, below.

Applicant is 33 years old and unmarried. He was born in Iraq, graduated from high school there in 2004, and then attended an Iraqi college for a short time. He lived in Iraq until September 2009, when he immigrated to the United States on a refugee visa. In October 2013, he earned an associate's degree at a junior college. He became a naturalized U.S. citizen in February 2015. (Tr. 16-18; GE 1)

Prior to coming to the United States, Applicant worked for the British Army for a year performing various tasks. He also worked as a technician for an Iraqi company. (Tr. 17, 24; GE 1)

Upon his arrival in the United States, Applicant was unemployed for six months before obtaining a position as a cook in March 2010. In July 2010, he obtained his current position as security guard for a private company. In May 2018, he applied for a linguist position with a federal contractor. (Tr. 19-20, 24; GE 1)

Applicant lives with his brother and sister-in-law, and their four children. His brother was born in Iraq and is a naturalized citizen and resident of the United States. He works as a teacher. Applicant and his brother purchased the house where they live in 2014. Applicant has a bank account in the United States. He does not have financial accounts in Iraq. (Tr. 21-22, 27, 60)

Applicant's elderly mother and father are citizens and residents of Iraq. His mother has (or had) U.S. permanent residency. She periodically resided with Applicant and his brother up to a year ago when she returned to live in Iraq and care for Applicant's father, who suffers from cancer. Applicant does not believe she will reside in the United States in the future. (Tr. 30-31) Applicant speaks to his mother daily about her health and his

father's condition. Applicant's father is a retired electrician. He worked for the Iraqi government and receives a pension. Applicant speaks to his father every two weeks, sometimes less frequently because his father is too sick to talk at times. (Tr. 36-38) Applicant sends his parents about \$200 quarterly to help with their medical expenses. He sent some money a couple of weeks before the hearing. (Tr. 33-34, 37-38)

Applicant has five brothers, four of whom are citizens and residents of Iraq. These four brothers are married and have children. One brother is employed as a police officer with the Iraqi police department. Applicant communicates with this brother once a month. (Tr. 39-42) One brother is a sergeant in the Iraqi army. Applicant speaks to him monthly. (Tr. 44) Another brother, with whom his parents reside, works for a private IT company in Iraq. This brother owns the home in which he and Applicant's parents reside. Applicant talks to him monthly. (Tr. 46-47) Applicant's fourth brother works for a barbershop. His brother was conscripted into the Iraqi army for a couple years. Applicant sent him \$200 a couple of months before the hearing because he was unemployed at that time. (Tr. 47-50, 59)

Applicant has three sisters, who are citizens and residents of Iraq. One sister works as an accountant for an Iraqi university. She is married and has children. Applicant speaks to her monthly. His second sister is married and has children. She is a housewife and has not worked outside of the home. He speaks to her monthly. His youngest sister is married and has one daughter. She is a student and lives with her family. Applicant sent his niece some money for school supplies. He speaks to his sister monthly. The occupations of his sisters' husbands are unknown. (Tr. 51-54)

Applicant's cousin is a citizen and resident of Iraq. He is married and has children. He is a police officer with Iraqi police department. Applicant speaks to him monthly. (Tr. 54-57)

All of Applicant's siblings and cousin reside near Applicant's parents. None of them have visited him in the United States. When Applicant speaks to his family, they talk about family matters and not personal things. None of these people are aware that Applicant is applying for a linguist position. (Tr. 62-63)

Applicant has three friends who are citizens and residents of Iraq. None of them are employed by the Iraqi government or military. He does not send them money. He talks or texts them every couple months. They have never visited the United States. (Tr. 57-58)

Applicant has returned to Iraq about six times since arriving in 2009. He went in 2011, 2013, 2015, 2016, and 2017. In April 2019, he visited his father whose illness is progressing. Applicant generally stays for at least a month when he returns to Iraq. He saw his siblings and one of his friends while there in April 2019. (Tr. 60-61, 66-68: GE 1)

In the spring of 2019, Applicant stopped communicating on a regular basis with his girlfriend. She is a citizen of Iraq and Norway, and resident of Norway. She visited

Applicant in the United States in 2018. (Tr. 27-29) At that time, he told her that he was applying for a linguist position and could return to Iraq to work. She does not want him to do that. (Tr. 63-64)

Applicant said he would not tell his family or friends if he obtains a linguist position and returns to Iraq. He said the area where his family lives is still not safe in terms of the presence of terrorists. He does not trust people living there. He stated that some Iraqi people, who had assisted the British army in the past, were subsequently killed. Before leaving for the United States in 2009, Applicant received a threatening letter for working with the British army. He told his family about the letter. (Tr. 70-72)

Iraq

I have taken administrative notice of facts contained in U.S. Government pronouncements concerning the state of Iraq, as outlined in HE 1, including the following: Iraq faces many challenges fueled by sectarian and ethnic divisions. Numerous terrorist groups are increasingly active throughout Iraq. The Islamic State of Iraq and the Levant (ISIL or Islamic State) controls some of the country's territory. Threats of kidnapping and violence are high, and the Department of State warns U.S. citizens that all travel to Iraq should be avoided. Additionally, human-rights-related problems including disappearances, torture, denial of fair public trial, and limits on freedom of speech and expression, are present.

Policies

When evaluating an applicant's suitability for national security eligibility, 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 to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person applying for national security eligibility 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 national security eligibility. 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 or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* Executive Order 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 describes conditions that could raise security concerns and may be disqualifying 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.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, that factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Iraq has significant internal anti-western terrorists that operate openly and contrary to U.S. interests. Accordingly, Applicant's close connections and visits to his family there generate significantly heightened risks of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶ 7(a).

Applicant has ongoing contacts with his parents, seven siblings, and a cousin, who are citizens and residents of Iraq. He has visited his family about six times since immigrating to the United States in 2009. He stays at least a month during those visits. He provides some financial support to his elderly parents, and occasionally siblings, when needed. These relationships create a heightened risk of foreign pressure or attempted exploitation because terrorists or insurgents in Iraq engage in behaviors that are hostile to the United States' interests. Applicant's relationships with family members there create a potential conflict of interest between Applicant's obligation to protect sensitive information or technology and his desire to help family members living in Iraq. The evidence is sufficient to raise a disqualification under AG ¶ 7(b).

After the Government produced sufficient evidence of those disqualifying conditions, the burden shifted to Applicant to rebut them or otherwise prove mitigation. Three mitigating conditions under AG ¶ 8 are potentially applicable to the disqualifying security concerns based on these facts:

(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;

(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.

Considered in light of the anti-western insurgent threats in Iraq, Applicant did not sufficiently demonstrate that it is unlikely he could be placed in a position of having to choose between the interests of a foreign individual or government and those of the United States due to his family ties in Iraq. In fact, he had previously received a threat for his work with the British army. He has legitimate and appropriately close relationships with those family members and a strong interest in protecting them. His communication and contact with them are frequent, ongoing, and not casual. Accordingly, he failed to establish the mitigating conditions set out in AG ¶¶ 8(a) and (c).

The evidence also fails to establish sufficient mitigation under AG ¶ 8(b). A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the United States." Applicant has minimal connections to the United States: he arrived in the United States in 2009; he earned an associate's degree in 2013; he became a citizen in February 2015, less than five years ago; he owns a home with his brother; and he has worked for U.S. companies since 2010. While these facts demonstrate a growing connection to the United States, they do not outweigh his long history and ongoing familial relationships in Iraq. There is insufficient evidence to conclude that Applicant's U.S. ties are so deep and longstanding that he can be expected to resolve any conflict of interest involving his family in Iraq in favor of the U.S. interests. Accordingly, he did not mitigate the foreign influence security concerns under this condition.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable 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 that guideline, but some warrant additional comment.

The foreign influence security concerns do not arise from any questionable conduct by Applicant, but rather circumstances that are normal results of his familial ties. There is no evidence that he has ever taken any action that could cause potential harm to the United States. However, after weighing the disqualifying and mitigating conditions, and all pertinent facts and circumstances in the context of the whole-person, I conclude Applicant failed to mitigate the security concerns pertaining to foreign influence. The significant potential for pressure, coercion, exploitation, or duress remains unmitigated. Overall, 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a through 1.g:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. National security eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge