



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



In the matter of:)
)
-----) ISCR Case No. 19-01780
)
)
Applicant for Security Clearance)

Appearances

For Government:
Aubrey De Angelis, Esq., Department Counsel

For Applicant:
Z. Dean Hakkak, Esq.

December 13, 2019

Decision

ROSS, Wilford H., Administrative Judge:

Based on a review of the pleadings, testimony, and exhibits, I conclude that Applicant has mitigated the concerns related to foreign influence raised by the presence of his family members in Iraq. His request for national security eligibility and a security clearance is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on October 24, 2017. (Government Exhibit 1.) On June 24, 2019, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, 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; 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*, effective within the Department of Defense on or after June 8, 2017.

Applicant answered the SOR on July 20, 2019, and requested a hearing before an administrative judge. (Answer.) Department Counsel was prepared to proceed on August 26, 2019. The case was assigned to me on August 27, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 28, 2019, scheduling the hearing for September 18, 2019. The hearing was convened as scheduled. The Government offered Government Exhibits 1 through 3, which were admitted without objection. The Government also submitted Hearing Exhibit I for Administrative Notice. Applicant testified on his own behalf and submitted Applicant Exhibits A through D, which were also admitted without objection. Applicant requested that the record remain open for receipt of additional documentation. Applicant Exhibits E through H were received in a timely manner and admitted without objection. DOHA received the transcript of the hearing (Tr.) on September 27, 2019.

Procedural Rulings

At the hearing, the Government requested I take administrative notice of certain facts relating to the Federal Republic of Iraq (Iraq). Department Counsel provided a seven-page summary of the facts, supported by eleven Government documents pertaining to Iraq, identified as Hearing Exhibit I. The documents provide elaboration and context for the summary. I take 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. (Tr. 12-13.)

Findings of Fact

Applicant admitted all of the SOR allegations with explanations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 33 years old, divorced, and has one child. He has a bachelor's degree, and an associate's degree with high honors. He is applying for national security eligibility and a security clearance in connection with his employment with a defense contractor as a linguist. This is his first application for a security clearance. (Applicant Exhibit D; Tr. 89-90.)

Paragraph 1 – Guideline B (Foreign Influence)

Applicant lived in Iraq until 2007, when he moved to Syria for a better life. He next moved to Lebanon, where he applied for refugee status to the United States. Refugee status was granted and the Applicant moved to the United States in 2009. (Government Exhibit 3.)

Applicant worked in private industry outside the defense field until 2017, when he began work with his current employer. He hoped to receive a security clearance, which would result in a promotion at work, allowing him to be of more assistance to the troops he is supporting, and put him in a better financial position in the United States. As of the date of the hearing he had been living in two overseas locations for over a year, assisting American military units acting as trainers for foreign military members. (Government Exhibits 1 at Section 13A, 2, and 3; Tr. 8-9, 44-47, 85, 108.)

Applicant became a naturalized American citizen on June 18, 2014. Applicant renounced his Iraqi citizenship when he became an American citizen. He has no Iraqi identification of any type. Applicant has no financial contacts with Iraq. His savings are in the United States, and his financial situation is stable. (Government Exhibit 1 at Sections 9 and 10; Tr.79, 92-94, 97-98, 103-112.)

Applicant married his first cousin in 2004. It was an arranged marriage. They separated after six months. Applicant's daughter was born in 2005. Applicant did not see or talk to his wife or daughter from 2005 until 2015. In 2015, before he began work as a linguist, Applicant visited Iraq using his American passport and attempted a reconciliation with his wife. It was unsuccessful. After being separated for many years, Applicant has legally divorced his wife in accordance with Iraqi law, as shown by legal documents in the record. He provides about \$300 every two or three months in support for his minor daughter. He has very little communication with his daughter, and none with his now ex-wife. He has no plans to move his daughter to the United States. (Government Exhibit 3 at 10; Applicant Exhibit E; Tr. 59-74, 77-78, 80-83, 95, 103.)

Applicant's mother lives in Iraq. He also has a brother and two sisters. His mother has dementia. Applicant has occasional telephonic contact with his mother and siblings. He sends his mother about \$300 every two or three months in support. Applicant's mother lived in the United States with Applicant in 2012-2013, but returned to Iraq. He has no plans to sponsor his mother or siblings for emigration to the United States. (Government Exhibit 3 at 10; Tr. 74-77, 84, 92, 94-97.)

Applicant filled out a counterintelligence-focused security screening questionnaire in 2017. (Government Exhibit 3.) He was also interviewed by an investigator from the Office of Personnel Management in 2017 and 2018. (Government Exhibit 2.) The information provided by Applicant during these occasions was consistent with his testimony during the hearing.

Mitigation

Applicant is proud to be an American citizen, and to have assisted the U.S. military in overseas locations. He feels no sense of loyalty to Iraq, stating that he views himself as “American-American,” as opposed to an Iraqi- or Arab-American. He has gone on many missions with the US military, transporting sensitive material from one base to another in foreign locations. He was proud to be involved in such missions, which he expressed at the time to the soldiers he was working with. (Tr. 50, 91-92, 105-106.)

Applicant was a highly respected and successful linguist while working in the overseas locations. This is shown by letters of appreciation and certificates of achievement presented to him with regard to his work during the period from 2018 through 2019. He was described as a linguist of “unique value,” helping secure the “safety and security” of American forces during operations. Applicant has a sense of allegiance to the soldiers and civilians he worked with. Several of the letters describe in detail how Applicant’s conduct was above the average for linguists. He has been recommended for a civilian service award by the unit he is currently supporting. (Applicant Exhibits A, B, C, F, G, and H; Tr. 86-88.)

One of the soldiers Applicant worked with, an Army National Guard sergeant, testified on Applicant’s behalf. He has a security clearance. Applicant and the witness worked together for eight months at an overseas location and have become friends. He worked often with Applicant and described in detail the reasons Applicant was the most trusted linguist within his unit. Applicant was diligent, always willing to do the most difficult missions, and would never talk about what he did when off the job. Applicant directly expressed to the witness his pride in being involved in sensitive and potentially dangerous missions. (Tr. 18-45.)

Applicant is very aware of his responsibilities if he obtains a security clearance, particularly if advances are made toward him or his relatives. He is knowledgeable of his security responsibilities, and is more than willing to fulfill them. (Tr. 98-102.)

Iraq

I take administrative notice of the following facts: In 2003, The United States led a coalition to remove Saddam Hussein from power in Iraq. After free elections, Iraq’s new government took office. Despite the elections and new government, Iraq remains engulfed in violence, perpetrated by Al Qaeda terrorists and other insurgents. Numerous attacks and kidnappings have targeted the U.S. Armed Forces, contractors, and other civilians, as well as Iraqis. Even with aggressive governmental action against terrorists, the threat of terrorism in Iraq remains high. Terrorist groups conduct intelligence activities as effectively as state intelligence services. (Hearing Exhibit I: Attachments.)

Policies

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

Paragraph 1 - 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 mother, brother, sisters, and daughter live in Iraq. Applicant is divorced from his now ex-wife. The evidence is sufficient to raise these disqualifying conditions.

Iraq has significant internal anti-western terrorism threats that operate openly and contrary to U.S. interests. Accordingly, Applicant's family connections in that country have the potential to generate a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶ 7(a). 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, this 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).)

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;

(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;

(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;

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

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; 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.

Applicant has minimal contact with his family members who live in Iraq. He is a proud American citizen, and he has succeeded in this country on his own, without help from anyone. AG ¶¶ 8(a), (b), and (c) apply.

Applicant is knowledgeable about his security responsibilities, and evinced a credible intent to rebuff any attempts by foreign actors to improperly influence him. AG ¶ 8(e) applies.

Applicant was involved in transporting sensitive, important, and dangerous cargo several times in overseas locations. The soldiers he worked with, including one who testified at his hearing, all indicate that Applicant did his job without any indication that he had breached security policies or procedures. While that fact is not normally to be considered a factor in granting a clearance, the Appeal Board stated in ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006) the following:

As a general rule, Judges are not required to assign an applicant's prior history of complying with security procedures and regulations significant probative value for purposes of refuting, mitigating, or extenuating the security concerns raised by the applicant's more immediate disqualifying conduct or circumstances. See, e.g., ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No. 02-10113 at 5 (App. Bd. Mar. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd. May 30, 2006). However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the national security. See, e.g., ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006). The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist and report a foreign power's attempts at coercion or exploitation.

I have carefully considered the fact that Applicant's family lives in Iraq, particularly his daughter. In this particular case, I find that Applicant has mitigated the security significance arising from their presence for the following reasons. Applicant has been subject to considerable screening for his various jobs. He consistently has identified his family members in Iraq. He has served U.S. national interests with pride and exceptional ability during his time overseas. Applicant has completely mitigated the security significance of the presence of his family members in Iraq. Paragraph 1 is found for Applicant.

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(b), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the pertinent 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 warrant additional comment.

Applicant was born and raised in Iraq. Since 2009 he has lived full time in the United States, working and attended school in order to advance himself. He has visited Iraq once since coming to the United States as a refugee. Applicant has shown himself to be a talented and patriotic American citizen and member of the defense industry. He can be expected to resolve any conflict of interest in favor of the United States due to his sense of loyalty to the United States.

Overall, the record evidence leaves me without questions or doubts as to Applicant's suitability for national security eligibility and a security clearance. For all these reasons, I conclude Applicant mitigated 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 Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a through 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 national security eligibility for a security clearance. Eligibility for access to classified information is granted.

Wilford H. Ross
Administrative Judge