



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 REDACTED) ISCR Case No. 18-02542
)
 Applicant for Security Clearance)

Appearances

For Government: Eric C. Price, Esq., Department Counsel
For Applicant: *Pro se*

02/20/2020

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant’s parents and siblings are resident citizens of Iraq, and several family members are or were employed by the Iraqi government. Applicant has not adequately mitigated the heightened risk of undue foreign influence that exists because of his close ties to his family members in Iraq. Foreign preference concerns were not established. Clearance eligibility is denied.

Statement of the Case

On January 31, 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, and Guideline C, foreign preference. The SOR explained why the DOD CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD on June 8, 2017.

On May 23, 2019, Applicant responded to the SOR allegations, and requested a decision based on the written record in lieu of a hearing. On November 5, 2019, the Government submitted a File of Relevant Material (FORM), containing five exhibits (Items 1-5). On November 7, 2019, the Defense Office of Hearings and Appeals (DOHA) forwarded a copy of the FORM to Applicant and advised him that any response was due within 30 days of receipt. Applicant received the FORM on December 2, 2019, and he apparently elected not to respond.¹ On January 24, 2020, the case was assigned to me to determine whether it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant. I received the case file on February 5, 2020. After reviewing the FORM, I admitted Items 1 through 4 as Government exhibits for the record.

Administrative Notice

In its FORM, the Government requests that the administrative judge take administrative notice of several facts pertaining to the Federal Republic of Iraq (Iraq), as set forth in a Request for Administrative Notice, dated October 31, 2019. The request was based on seven publications from the U.S. State Department; a January 29, 2019 Statement for the Record from the U.S. Director of National Intelligence; a publication from the U.S. Department of Homeland Security; a publication from U.S. Customs and Border Protection; federal Public Law 114-113; and Title 8 Section 1187 of the United States Code. Applicant was reportedly provided extracts of the cited documents and the URLs where he could obtain the full documents. I was given only the URLs.

The documents and laws relied on by the Government are proper for administrative notice and are not subject to reasonable dispute. Applicant did not respond to the FORM, and thus he waived any objections to the administrative notice request or to the facts set forth therein. Appeal Board precedent, set forth in ISCR Case No. 05-11292, dated April 12, 2007, requires that the administrative judge consider the most current political conditions in a foreign country when evaluating Guideline B cases. Accordingly, I accepted the Government's Request for Administrative Notice in the record, accessed and reviewed the full text of the publications relied on by the Government for administrative notice, and took administrative notice of the facts set forth below.

Summary of SOR Allegations and Response

The SOR alleges under Guideline B that Applicant's mother (SOR ¶ 1.a), his father (SOR ¶ 1.b), his three brothers (SOR ¶ 1.c), and his four sisters (SOR ¶ 1.d) are resident citizens of Iraq, and that many of his family members, including his father, siblings, in-laws, uncles, and cousins are or were employed by the Iraqi government (SOR ¶ 1.e). Named in the SOR are the Iraqi government entities that employ two of his brothers, one of his sisters, and a brother-in-law. The names of the government entities are not mentioned in this decision to protect Applicant's and his family's privacy. Under Guideline

¹ A January 22, 2020 memorandum in the file indicates that Applicant had a January 1, 2020 deadline to respond, which is a federal holiday. There is no evidence that Applicant has filed any response to the FORM.

C, Applicant is alleged to have served in the Iraqi National Guard from approximately 2003 to 2005 (SOR ¶ 2.a). (Item 1.) When Applicant responded to the SOR, he admitted the allegations under Guidelines B and C without comment. (Item 2.)

Findings of Fact

Applicant's admissions to the Iraqi residency and citizenship and the Iraqi government employments of his family members, and to his former service in the Iraqi National Guard, are accepted and incorporated as findings of fact. After considering the FORM, I make the following additional findings of fact:

Applicant is a 39-year-old dual citizen of the United States and his native Iraq. Applicant has never married, but he has a five-year-old daughter, who was born in the United States in August 2014. As of August 2017, Applicant was paying child support at \$700 a month. (Item 4.) He became a naturalized U.S. citizen in January 2017. Although he expressed an intention to renounce his Iraqi citizenship when he applied in July 2017 for a DOD clearance to work as a linguist for a defense contractor (Item 3), and indicated during an October 2017 subject interview that he had signed a form renouncing his Iraqi citizenship during a counterintelligence screening interview in August 2017 (Item 5), there is no evidence showing that he no longer holds Iraqi citizenship.

Applicant was raised in his native Iraq. He is the third of eight children born to his parents, both native resident citizens of Iraq. His father retired from a position with the Iraqi government. His mother did not work outside the home. Applicant's siblings (an older brother and sister, three younger sisters, and two younger brothers) are Iraqi resident citizens. (Items 3-4.)

Applicant earned a bachelor's degree in November 2004 from a technological university in Iraq. At that time, he was serving in Iraq's National Guard at the rank of sergeant. He enlisted voluntarily because of the financial benefit and the lack of civilian work in Iraq at the time and began active duty service in June 2003. He was discharged in July 2005. He then worked as an electrical engineer for a construction company in Iraq until November 2006. From November 2006 to July 2009, he worked on a reconstruction team in Iraq providing linguist services in support of the U.S. government. (Items 3-4.) He had yearly security screenings as part of his employment as a local hire in Iraq for his duties for the U.S. government. (Item 4.)

Applicant came to the United States on a Special Immigration Visa (SIV) in July 2009. (Items 4-5.) The United States granted employment fourth preference immigration visa status to certain special immigrants, including Iraqi nationals who were employed by or on behalf of the U.S. government in Iraq for at least 12 months and met certain requirements. See travel.state.gov/content/travel/en/us-visas/immigrate/special-immg-visas-iraqis-employed-us-gov.html. He was cleared to immigrate in March 2009 and was issued the SIV in April 2009. He entered the United States on an Iraqi passport issued in January 2007 and valid until January 2015. (Item 4.) After a brief period of unemployment in the United States, Applicant worked part time, as needed, as an interpreter and role

player from November 2009 to March 2011. He indicates that he had a counterintelligence (CI) screening in June 2010 (Item 5) for that work. He also held a job with a company from November 2010 to February 2011. From May 2011 to October 2011, Applicant worked full time as a security guard. He left the job voluntarily, and worked as an equipment operator in the oil industry from October 2011 to August 2012. (Item 3.)

Applicant attended graduate school in the United States from August 2012 to November 2013, and was awarded his master's degree in industrial engineering in December 2013. He returned to work for his previous employer in the oil industry in the United States until September 2015, when he was terminated for failure to show up for work during his scheduled days off. Applicant collected unemployment compensation while out of work from October 2015 to April 2016. From May 2016 through at least October 2017, Applicant worked as a truck driver for a succession of seven different employers in the United States. (Items 3-4.)

In January 2017, Applicant became a naturalized U.S. citizen on his own application submitted in October 2014. He obtained a U.S. passport in early February 2017. Later in February 2017, he renewed his Iraqi passport, which expires in mid-February 2025. (Items 3-4.) He was in Iraq for his uncle's funeral and had entered Iraq using his Iraqi passport that expired in January 2015. He used his expired Iraqi passport rather than his newly-obtained U.S. passport because he wanted to avoid the visa fee, and he renewed his Iraqi passport because under Iraqi law, he was required to exit Iraq on a current Iraqi passport. That Iraqi passport bears a departure stamp from Iraq dated February 27, 2017. (Item 4.)

In June 2017, Applicant was offered contract work by a defense contractor (company X) to provide linguist services in Iraq to the United States military, apparently contingent on passing a CI screening and background investigation for security clearance eligibility. On July 24, 2017, Applicant completed and certified to the accuracy of a security clearance application (SCA) on which he disclosed personal and family ties to Iraq, including his Iraqi citizenship and possession of a valid Iraqi passport. He stated about his foreign citizenship that he was renouncing it as an employee of company X and that he will surrender his Iraqi passport to company X following his CI screening. Applicant indicated that he had used his Iraqi passport in February 2017 to travel to Iraq but used his U.S. passport while in transit through Qatar. Applicant disclosed on his SCA that his parents and siblings are resident citizens of Iraq, and he listed their employments showing that, with limited exception, his family members are or were employed by Iraq's government. Applicant reported that he had daily telephone contact with his mother and brothers and weekly contact with his father and sisters. Applicant responded affirmatively to an SCA inquiry concerning whether he has or has had close or continuing contact with other foreign nationals within the last seven years. He listed ten persons with Iraqi citizenship, eight living in Iraq and two living in the United States. Of the eight persons in Iraq, four work for Iraq's government and one works for a public university; two are homemakers; and one is a self-employed jeweler. (Item 3.)

On August 30, 2017, Applicant was interviewed by a government investigator as part of his CI screening. He explained that he immigrated to the United States with a SIV because he wanted to start a new life in the United States, and he had previously worked for the United States in Iraq and was concerned for his safety in Iraq. He denied that he had any allegiance to any country over the United States, stating that he loves the United States and that his affection grew for the United States because he was trained by the United States military while he served in the Iraqi National Guard. He denied any ongoing association with anyone with whom he served in Iraq. He admitted that he sometimes misses Iraq but has decided to stay in the United States and “become something.” Applicant expressed a plan to renounce his Iraqi citizenship, and to surrender his Iraqi passport to company X on completion of his CI screening. In the event of any attempts to threaten or blackmail him, Applicant indicated that he would contact the U.S. government. He could conceive of no situation where it would be acceptable to betray the U.S. government. (Item 4.)

During his CI, Applicant discussed his family members in Iraq, their employments, and his contacts with them. The family members with whom he has ongoing contact are set forth in the following table.

Relationship to Applicant	Foreign employment	Frequency of Applicant's contact
Father – resident citizen of Iraq	Retired in 2012 after 35 years as power technician for a ministry of Iraq's government	Weekly
Mother – resident citizen of Iraq	Homemaker	Daily
Brother age 44 – resident citizen of Iraq (lives in parents' home with his family)	Office manager for Iraqi government agency since October 2013	Daily
Sister age 42 – resident citizen of Iraq	Office manager for committee of Iraq government since June 2006	Weekly
Sister age 38 – resident citizen of Iraq	Public high school teacher since March 2006	Weekly
Brother-in-law (spouse of 38-year-old sister) – resident citizen of Iraq	Committee chairman in Iraq government since April 2014	Monthly
Sister age 30 – resident citizen of Iraq	Administrative employee for Iraq government council since June 2012	Weekly
Brother-in-law – resident citizen of Iraq (spouse of 30-year-old sister)	Employee of Iraqi government commission since February 2010	Weekly

Sister age 32 – resident citizen of Iraq	Teacher at public elementary school since April 2011	Weekly
Brother-in-law – resident citizen of Iraq (spouse of 32-year-old sister)	Professor at public university since May 2006	Monthly
Brother age 27 – resident citizen of Iraq	Legal officer for council in Iraqi government since February 2014	Daily
Brother age 20 – resident citizen of Iraq	High school student	Daily
Aunt – resident citizen of Iraq	Homemaker	Monthly
Cousin – resident citizen of Iraq	Lab technician for Iraqi government ministry since July 2007	Quarterly (monthly as of October 2017)
Cousin – resident citizen of Iraq	Production unit supervisor for Iraqi government ministry since December 2002	Quarterly (monthly as of October 2017)
Cousin – resident citizen of Iraq	Homemaker	Monthly
Cousin – resident citizen of Iraq	Jewelry store worker	Quarterly

Applicant also provided the names and occupations of 15 other extended family members (uncles, aunts, cousins) in Iraq, including three cousins who work for the Iraqi government. He saw nine of these extended family members when he was in Iraq for his uncle's funeral in February 2017, including a cousin who has worked in intelligence for the Iraqi government since July 2014. He has otherwise had no contact with these 15 family members in Iraq since January 2007. CI agent reviewers considered Applicant to be a potential security risk because of Applicant's renewal and use of a current Iraqi passport to depart Iraq in February 2017 and his family members' employment with Iraq's government, particularly in light of his older brother's employment and a cousin's intelligence duties. (Item 4.)

On October 30, 2017, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). Applicant stated that company X took possession of his current Iraqi passport about a month prior to his OPM interview. He also stated that he would renounce his Iraqi citizenship as soon as he is granted a security clearance and that he had signed a renunciation form at his CI screening in August 2017. (Item 5.) Available records from that CI screening (Item 4) do not include any renunciation form or other document showing action taken to renounce his Iraqi citizenship. When asked about his contacts with family members in Iraq, Applicant provided information consistent with what he had said during his CI with some limited exceptions. He related that he has not had any contact since 2007 with some of his

extended family in Iraq, including no contact with the cousin who works in intelligence for the Iraqi government. He disclosed his travel to Iraq for his uncle's funeral, but there is no indication that he told the OPM investigator that he saw several members of his extended family at the funeral. (Item 5.)

By way of interrogatories, DOHA provided a copy of a summary report of his October 2017 OPM interview for his review. On January 5, 2019, Applicant adopted the summary as accurate with a few corrections, including that a friend discussed during the interview was living in the United States and not Baghdad. Applicant also responded to foreign influence inquiries. He disclosed his previous service in Iraq's National Guard. He provided information about his relatives in Iraq, which showed no changes in the Iraqi government employments of his family members from what he had reported during his August 2017 CI screening. Applicant denied that he has any foreign financial interests, while also reporting that he had a new employer since March 2018 and was working as an electronics technician. Applicant answered "Yes" to whether he currently holds a foreign passport because company X had returned his valid Iraqi passport to him "about 3 months ago." He had not used that passport since he departed Iraq for the United States in February 2017. (Item 5.)

As of August 30, 2017, Applicant reported financial assets in the United States of \$5,700, consisting of a 2008 model-year vehicle worth \$2,000 and \$3,700 in bank savings. He owed \$21,853 on a federal student loan, \$1,716 on a credit loan, \$2,926 on a car loan, and \$14,540 in credit-card debt. His monthly net income was \$4,542, and after paying expenses and debts, he had \$18 in discretionary income. (Item 4.) In response to DOHA interrogatories, Applicant did not provide updated information about his finances other than to indicate that he is making more money in his current job, which he started in March 2018. Applicant has no foreign financial assets, and he does not expect to inherit any property in Iraq. He denies voting or exercising any rights of his Iraqi citizenship since immigrating to the United States in July 2009. (Item 5.) There is no information in the record about whether Applicant has voted in the United States or whether he is involved in community or other activities in the United States.

Administrative Notice

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 16-02522 at 2-3 (App. Bd. July 12, 2017); 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)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *ADMINISTRATIVE LAW*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

After reviewing the source documents relied on by the Government, I have taken administrative notice of the facts set forth in the Government's October 31, 2019 request and incorporate them by reference in this decision. For additional background information

regarding Iraq's relationship with the U.S., I have reviewed the U.S. State Department's Bilateral Relations Fact Sheet, issued for Iraq on November 13, 2019. Consistent with my obligation to consider updated information in Guideline B cases, I have received the latest State Department travel advisory for Iraq issued on January 11, 2020. Of particular note are the following salient facts.

Iraq is a constitutional parliamentary republic. With the assistance of the United States and in coordination with the Global Coalition to Defeat ISIS, Iraq liberated its territory from ISIS in December 2017. The United States increased its efforts to stabilize liberated areas as Iraq continues to develop as a sovereign, stable, and self-reliant country. Iraq is now considered a key partner of the United States in the region and as a voice of moderation and democracy in the Middle East. Iraq benefits from functioning government institutions, including an active legislature. The United States maintains vigorous and broad engagement with Iraq on diplomatic, political, economic, and security issues in accord with the U.S.-Iraq Strategic Framework Agreement. Since 2014, the United States has contributed billions of dollars in humanitarian, de-mining, and stabilization aid to conflict-affected and displaced Iraqis in the region. U.S. security assistance programs support the development of a professional Iraqi military capable of defending Iraq and its borders, responding to threats, and conducting counterterrorism operations, and promote civilian oversight of the military, adherence to the rule of law, and respect for human rights. Iraq's efforts to transition to a market-oriented economy are aided by a significant increase in investment by U.S. companies in Iraq in the last ten years. To increase trade, the United States has designated Iraq as a beneficiary developing country under the Generalized System of Preferences program.

Parliamentary elections in Iraq in 2018 were imperfect but generally met international standards of free and fair elections and led to the peaceful transition of power to Prime Minister Adil Abd al-Mahdi. However, some human rights abuses persisted. In 2018, civilian authorities did not maintain effective control over some elements of the Iraq Security Forces (ISF), particularly certain units of the Popular Mobilization Forces (PMF) aligned with Iran that were implicated in unlawful or arbitrary killings. Other significant human rights abuses included forced disappearances; torture and arbitrary arrest and detention; arbitrary or unlawful interference with privacy; restrictions on free expression, the press, and the Internet, including censorship; legal restrictions on free movement by women; widespread official corruption; unlawful recruitment or use of child soldiers by the Iran-aligned PMF; trafficking in persons; and criminalization of lesbian, gay, bisexual, transgender, and intersex (LGBTI) status and conduct. Impunity existed for government officials and security force personnel.

ISIS continued to carry out deadly attacks and kidnappings in Iraq, resorting increasingly to targeted assassinations of police and local political leaders through shootings and improvised explosive devices (IEDs). With the cooperation of the United States and the international community, Iraq improved its ability to detect and prevent terrorist threats and in disrupting terrorist activities by detaining, arresting, and trying thousands of suspected terrorists in 2018. Border security remained a critical gap in capability as the ISF had limited capability to fully secure Iraq's borders with Syria and

Iran. Iraqi Shia militants conducted several attacks against U.S. diplomatic facilities in Iraq in September 2018 and December 2018. In January 2019, the U.S. Director of National Intelligence expressed that the PMF Shia militias supported by Iran remained the primary threat to U.S. personnel in Iraq and that the threat is expected to increase as the tension between Iran and the United States increases.

As of January 11, 2020, the U.S. State Department's travel advisory for Iraq was Level 4: Do Not Travel due to terrorism, kidnapping, and armed conflict. U.S. citizens in Iraq are considered to be at high risk for violence and kidnapping. Terrorist and insurgent groups active in Iraq regularly attack both Iraqi security forces and civilians. Anti-U.S. sectarian militias threaten U.S. citizens and Western companies throughout the country. Effective December 31, 2019, the U.S. Embassy suspended public consular services until further notice because of the damage inflicted by Iranian-backed terrorist attacks on the Embassy compound. Operations at the U.S. Consulate General in Basra have been suspended since October 18, 2018. U.S. Embassy personnel in Baghdad have been instructed not to use Baghdad International Airport due to security concerns.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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 applicant or proven by Department Counsel. . . ." The applicant 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 the 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B: Foreign Influence

The security concerns about foreign influence are articulated 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 that is 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.

Applicant’s parents and siblings are resident citizens of Iraq. Applicant’s father retired in 2012 after 35 years of employment with the Iraqi government. Six of Applicant’s seven siblings are currently employed in Iraq for different agencies or departments of Iraq’s government. His youngest brother is a student. His older brother is employed as an office manager for an agency that has security duties. Another brother is a legal officer for Iraq’s government. Some of the members of Applicant’s extended family in Iraq work for Iraq’s government, including a cousin with intelligence duties. Two of Applicant’s sisters are teachers and work in schools rather than directly in the service of Iraq’s central government or parliament. However, the spouse of one of Applicant’s sisters heads a committee in Iraq’s government.

The evidence shows that Applicant holds dual citizenship with his native Iraq and a current Iraqi passport, and that he renewed his Iraqi passport in February 2017 after he became a naturalized U.S. citizen. His Iraqi citizenship could impose obligations inconsistent with his U.S. citizenship that would make him vulnerable to foreign influence, especially in Iraq. Neither his foreign citizenship nor his possession of a foreign passport

were alleged under either under Guideline B or Guideline C, so they cannot be considered for disqualification purposes. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in a SOR may be considered, as follows:

- (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for the whole-person analysis under Directive Section 6.3.

A person is not automatically disqualified from holding a security clearance because he has relatives with foreign citizenship or they live in a foreign country. However, if any applicant, his or her spouse, or someone sharing living quarters with them, has such a relationship with even one person living in a foreign country, 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, 08-02864 at 4-5 (App. Bd. Dec. 29, 2009). Contacts and connections to foreign citizens are potentially disqualifying if they present a heightened risk under AG ¶ 7(a), or they create a potential conflict of interest under AG ¶ 7(b). Those disqualifying conditions provide:

- (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 "heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. The nature and strength of the family ties or other foreign interests and the country involved (*i.e.*, the nature of its government, its relationship with the United States, and its human rights record) are relevant in assessing whether there is a likelihood of vulnerability to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government; a family member is associated with, or dependent on, the foreign government; or the country is known to conduct intelligence operations against the United States. Moreover, in considering the nature of the foreign government, the administrative judge must take into account any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006). A heightened level of scrutiny is warranted when an applicant has a close relationship with relatives who reside in a country where elements hostile to the United States and its interests operate somewhat freely. See *generally* ISCR Case No. 12-05092 at 5 (App. Bd. Mar. 22, 2017.)

While there is no evidence that intelligence operatives, criminals, or terrorists from or in Iraq seek or have sought classified or economic information from or through Applicant or his family, nevertheless, it is not prudent to rule out such a possibility in the future. Despite Iraq's liberation of its territory from ISIS control in December 2017, Iraq continues to have a significant problem with terrorism from Iran-backed militias. The U.S. Embassy in Iraq has suspended public consular service because of the damage inflicted by Iranian-backed terrorist attacks on the Embassy compound. The State Department currently advises U.S. citizens against traveling to Iraq because of risks of kidnapping, terrorism, and armed conflict. Iraq remains a dangerous place, despite the progress in countering terrorism that targets Westerners and Iraqis.

As alleged in SOR ¶ 1.c, many of Applicant's family members in Iraq are or were employed by Iraq's government, some in prominent positions or in agencies or departments with intelligence or security duties. In carrying out their duties, they are required to further Iraq's interests, and some of Applicant's family members may well be known to persons beyond their immediate sphere of influence. The issue under Guideline B is not whether an applicant's family members in a foreign country are of interest to a foreign government or entity based on their prominence or personal situation. The issue is whether an applicant's foreign ties and contacts create a potential vulnerability that a foreign power or terrorists could seek to exploit in an effort to obtain unauthorized access to classified or sensitive information. See ISCR Case No. 03-24933 (App. Bd. July 28, 2005). Applicant does not have any ongoing contact with some of his cousins in Iraq, including with the cousin who has intelligence duties. However, his close bonds of affection to his parents and siblings in Iraq are evident by his regular contact with them. He reported daily telephone contact with his mother and brothers. It is conceivable that undue influence or pressure could be brought to bear on Applicant through his understandably close connections to his family in Iraq. Disqualifying conditions AG ¶¶ 7(a) and 7(b) apply.

Applicant has a significant burden of persuasion to demonstrate that he cannot be forced to choose between loyalty to the U.S. and a desire to assist his immediate family members. AG ¶ 8(a) provides for mitigation as follows:

(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.

AG ¶ 8(a) does not apply because the foreign persons involved are immediate family with whom Applicant has close bonds of affection if not also obligation; there is a significant threat of violence and terrorist activity in Iraq; and there are ongoing human rights problems in the country. The risk of any of his family members being kidnapped or pressured cannot be discounted.

Regarding AG ¶ 8(b), during his August 2017 CI screening, Applicant denied any allegiance for Iraq over the United States. He expressed an intention to remain in the United States. Even so, it is difficult to conclude that the bonds of affection and obligation to his immediate family in Iraq are similarly so minimal to satisfy the first part of AG ¶ 8(b), which provides:

(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 United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

Concerning whether Applicant has such deep and longstanding relationships and loyalties in the United States that he can be counted on to resolve any conflict in favor of the U.S. interest, Applicant developed an affinity for the United States even while he was living his native Iraq. While voluntarily serving in the Iraq National Guard from June 2003 to July 2005, he earned a bachelor's degree from an Iraqi university. However, in the Guard, he was trained by U.S. forces. He then worked on a reconstruction team serving the U.S. military in Iraq from November 2006 until July 2009, when he immigrated to the United States with a SIV given after vetting and meeting certain requirements. Applicant earned a master's degree in industrial engineering in the United States in December 2013. In January 2017, he became a naturalized U.S. citizen on his own application submitted in October 2014. Applicant chose to pursue his life and career in the United States. His income is solely from U.S. sources. He has no foreign financial assets. He has a five-year-old daughter who is a U.S. resident citizen for whom he pays child support.

Even so, Applicant has maintained his Iraqi citizenship and passport. Applicant's possession of Iraqi citizenship and a valid Iraqi passport are relevant under Guideline B in assessing the relative strength of his ties to his native Iraq and the United States in determining whether, in mitigation under AG ¶ 8(b), he can be counted on to resolve any conflict in favor of the United States. After he obtained his U.S. citizenship and U.S. passport, he traveled to Iraq for his uncle's funeral in February 2017. He entered Iraq on his expired Iraqi passport in preference to his U.S. passport because he did not want to pay for a visa. He renewed his then expired Iraqi passport when he was in Iraq, apparently in accord with Iraqi law. In approximately September 2017, he surrendered possession of his Iraqi passport to the company currently sponsoring him for a clearance to work as a linguist in Iraq, but the passport was returned to him in the fall of 2018. Applicant has expressed a willingness to renounce his Iraqi citizenship, but it appears to be conditioned on a favorable adjudication of his security clearance eligibility. Applicant is not required to renounce his Iraqi citizenship, and as a dual citizen, he is legally entitled to accept benefits or privileges offered by Iraq. However, it undercuts his case with respect to establishing that his ties to the United States are so deep and longstanding that he can be counted on to resolve any conflict in favor of the United States.

Applicant's willingness to support the DOD in Iraq as a linguist, including the dangers that service in Iraq entails, carries some mitigating weight under AG ¶ 8(b).

Nevertheless, his family members in Iraq are at risk from criminals, terrorists, and human rights violations of the Iraqi government. Applicant presented no evidence from others attesting to his commitment to his work, his involvement in his local community, or other aspects of behavior that could weigh in his favor with respect to demonstrating that he could not be manipulated or induced to aid a foreign family member. It cannot reasonably be said under AG ¶ 8(c) that his “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.” His connections to his family members in Iraq are not so attenuated to overcome the foreign influence security concerns.

Guideline C: Foreign Preference

The security concerns about foreign preference are articulated in AG ¶ 9:

When an individual acts in such a way to indicate a preference for a foreign country over the United States, then he or she may provide information or make decisions that are harmful to the interests of the United States. Foreign involvement raises concerns about an individual’s judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. By itself, the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen’s exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

Applicant’s service in the Iraq National Guard from June 2003 to July 2005 could raise foreign preference concerns under AG ¶ 10(d), which provides:

(d) participation in foreign activities, including but not limited to:

- (1) assuming or attempting to assume any type of employment, position, or political office in a foreign government or military organization; and
- (2) otherwise acting to serve the interests of a foreign person, group, organization, or government in any way that conflicts with U.S. national security interests.

Available information falls short of establishing that Applicant’s military service for Iraq conflicted with U.S. national security interests. His military service occurred before he became a U.S. citizen. He credibly indicated during his CI screening interview that he was trained by U.S. forces while he served in the Guard. To the extent that any issues of foreign preference arise, they would be mitigated by his immigration to the United States and willingness to provide assistance to the DOD in Iraq. He immigrated to the United States in July 2009 after working for the U.S. military in Iraq because he feared for his

safety in Iraq because of that work. His current desire to serve as a linguist for the United States in Iraq shows his patriotism, loyalty, and fidelity to the United States. Concerns of foreign preference were not sufficiently established.

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 his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(d), which are as follows:

(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.

Furthermore, in weighing these whole-person factors in a foreign influence case, the Appeal Board has held that:

Evidence of good character and personal integrity is relevant and material under the whole person concept. However, a finding that an applicant possesses good character and integrity does not preclude the government from considering whether the applicant's facts and circumstances still pose a security risk. Stated otherwise, the government need not prove that an applicant is a bad person before it can deny or revoke access to classified information. Even good people can pose a security risk because of facts and circumstances not under their control. See ISCR Case No. 01-26893 (App. Bd. Oct. 16, 2002).

Applicant cannot control the decisions of his parents' and siblings' decisions to live and work in their native Iraq. While there is nothing untoward about his relationships and contacts with his family members in Iraq, his present circumstances are such that he could be placed in an untenable position of having to choose between the interests of a loved one and the U.S. As stated by the DOHA Appeal Board in ISCR Case No. 08-10025 (App. Bd. Nov. 3, 2009), "Application of the guidelines is not a comment on an applicant's patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved-one, such as a family member." Applicant presented no evidence from others attesting to his commitment to his work, his involvement in his local community, or other aspects of behavior that could weigh in his favor with respect to demonstrating that he could not be manipulated or induced to aid a foreign family member. Based on the facts and circumstances before me, concerns of undue foreign influence persist.

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 C:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge