



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



In the matter of:)
)
) ISCR Case No. 18-02656
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: James Phillips, Esq.

03/20/2020

Decision

WHITE, David M., Administrative Judge:

Applicant failed to mitigate the Foreign Influence concerns created by his contacts and connections with family members in Iraq. Based upon a review of the record as a whole, national security eligibility for access to classified information is denied.

History of Case

On May 8, 2017, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On November 14, 2018, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines for national security eligibility effective within the DoD on June 8, 2017.

Applicant answered the SOR in writing on December 17, 2018 (Answer). He admitted the SOR allegations, with some explanations, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on February 7, 2019. After some delays requested by Applicant, due to his overseas employment obligations, DOHA issued a Notice of Hearing on August 7, 2019, setting the hearing for September 10, 2019. On that date, Department Counsel offered Government Exhibits (GE) 1 through 3 into evidence. Applicant testified and offered Applicant Exhibits (AE) A through C into evidence. All exhibits were admitted without objection. I took administrative notice of the facts concerning Iraq that are set forth on pages 2 through 6 of the Government's Request for Administrative Notice, which is marked Hearing Exhibit (HE) II and included in the record.¹ DOHA received the hearing transcript (Tr.) on September 18, 2019.

Findings of Fact

Applicant is 50 years old. He was born and lived in Iraq until age 22. He and his wife married in 2003, and they have three children, ages 15, 14, and 10. His wife and children were also born in Iraq. He and his family came to the United States in 2010 under a special refugee visa program, based on his work, starting in October 2004, as a linguist/interpreter for a company supporting U.S and coalition force training programs in Iraq. They all became permanent U.S. residents in 2011, and became naturalized U.S. citizens in August 2015. (GE 1; GE 2; GE 3; AE B; Tr. 26-40.)

Applicant earned an associate's degree in Iraq in 1990, and certification as an HVAC technician in 2015 from a college in the United States. From 2010 until 2017 he worked full-time in several security guard, maintenance, and HVAC technician jobs, except for a brief part-time employment in 2015 and 2016. He has been employed since May 2017 by a defense contractor as a contract linguist, to serve overseas in direct support of U.S. Army units. He renounced his Iraqi citizenship and applied for a security clearance in connection with that position. His wife is currently a preschool/daycare teacher, and his children attend local schools, in the United States. (GE 1; GE 2; GE 3; Tr. 26-40.)

Applicant's mother and father are deceased. He has seven brothers and four sisters, who are all citizens and residents of Iraq. His wife's parents and siblings are also Iraqi citizens and residents. Several of these relatives are employed by civilian government agencies, but none have any connection to Iraqi defense or intelligence agencies. Except for one brother, Applicant has intentionally avoided contact with his family members in Iraq for many years, as further discussed below. He also has numerous Iraqi aunts, uncles, and cousins who reside there. Two of his cousins, with whom he has had no contact for years, served and retired from careers in the Iraqi armed forces. (GE 2; GE 3; AE C; Tr. 35, 41-49, 53-65.)

¹ HE I is the Government Exhibit Index.

Although Applicant obtained regular employment in the United States, he did not earn enough money to satisfactorily house and support his family until he obtained his present job after returning from a 20-day visit to Iraq in May 2017. He explained, in his June 2017 counterintelligence-screening interview, that his wife and children had returned to reside in Iraq in March 2017 because his wife was depressed and was having a hard time adjusting to life in the U.S. They rented a home in Iraq so she could live near her family. Applicant wired them about \$500 per month for living expenses, while he lived in a homeless shelter and sought better work in the United States. In September 2017, Applicant's wife and children moved back to the United States. They have repaid their temporarily delinquent debts from that period, and purchased a house with the greatly increased income he earns working for the defense contractor. (GE 1; GE 2; GE 3; Tr. 35-38, 46-50.)

During his June 6, 2017 interview with an investigator from the Office of Personnel Management (OPM), Applicant explained that he:

has not maintained any contact with his various brothers and sisters, except with his brother [A], whom [he] will speak with daily to monthly on the phone. [He] is not close to his brothers and sisters as he does not trust that they could reasonably keep private that he lives in the US and is considering working as a contractor for the US Army in Iraq. He fears for his wife and children's safety if this information stumbled into the wrong hands, like that of an anti-US or terrorist group. [He] clarified none of his family members are involved in any anti-US activities, but fears they could accidentally share what [he] does and as a result that information could trickle to other people and ultimately end up putting [him] in danger. [He] only trusts that his brother [A] would keep this information absolutely private, hence why they still have communication.

Applicant testified during his hearing that his family members know that he lives in the United States, but only his brother [A] knows that he "is working for Americans" in Iraq. He further explained:

Nobody knows other than him, so all my brothers I did not tell them I'm working for Americans. . . . They are all in danger, you know, because they've been in danger when I was working here. Now, as long as I'm outside, I don't see them, so . . . they are safe. . . . [I have not been in touch with them at all since 2010], the main reason, because I work with the Americans, so I cut all my relationship for their safety. I used to see them every day but . . . [Brother A], he got to take the risk because I got to have contact with someone. (Tr. 57-62.)

Describing his and his family's experience moving to the United States he testified, "I'm feeling American. So I'm - - this is my country. So even my kids, my family, they started to feel American. So that's it. We kind of lost connection with the Iraqi citizenship; now everything became - - we start to integrate into American society." He said that he

would continue to be loyal to America, that he no longer considers Iraq to be his home country. He said that a friend and coworker had been shot and died a month earlier while serving as a linguist in Iraq, but he does not care about the danger associated with his work there because he feels he is doing the right thing. (Tr. 51-52.)

Applicant provided character reference letters and a certificate of commendation related to his work in Iraq as a linguist/interpreter from 2004 to 2008. He explained that he did not obtain any evaluations or letters from his more recent employment because he only worked with people for a few months at a time so he could not ask them for a letter. (AE A; Tr. 65-66.)

I have taken administrative notice of facts contained in U.S. Government publications concerning the state of Iraq, as outlined on pages 2 through 6 of HE II, including the following: Iraq faces many challenges fueled by sectarian and ethnic divisions. Numerous terrorist groups and anti-U.S. sectarian militias are active throughout Iraq. The Islamic State in Iraq and Syria (ISIS) no longer controls a portion of the country's territory, but remains active in both countries and controls some areas of Syria along the border. Threats of terrorist attacks, kidnapping, and violence are high from ISIS and Iranian-backed Shia militias. The Department of State has advised U.S. citizens not to travel to Iraq, and U.S. Government personnel assigned to duty in Iraq are required to live and work under strict security guidelines. Additionally, human-rights-related problems including kidnappings for ransom, disappearances, torture, and attacks against civilians have been noted.

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(b) and 2(c), the entire process is a conscientious scrutiny of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that any doubt concerning personnel being considered for national security eligibility be resolved in favor of the national security. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence

contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 requires that 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 applies 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 eligibility for access to classified information or assignment in sensitive duties. 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, “Any 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 *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B: Foreign Influence

AG ¶ 6 expresses the security concerns regarding foreign influence:

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 sets out conditions that could raise a security concern and may be disqualifying. Two of them are potentially applicable:

- (a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;² 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 has normal and commendable familial connections with most of his 11 siblings, and numerous more-distant family members, who are residents and citizens of Iraq. Out of laudable and ongoing concern for their welfare, and hoping to minimize the threat of reprisals against them for his activities, he has minimized contact and communications with all but one of these relatives since he first chose to actively support U.S. interests and operations in Iraq. These relationships, both objectively and in his mind, create a heightened risk of foreign pressure, coercion, and exploitation because terrorists, insurgents, or anti-U.S. militia personnel in Iraq may threaten Applicant or his family, as they seek intelligence or engage in behaviors that are hostile to U.S. interests. Applicant has not been personally attacked as a result of his service with U.S. and coalition forces in Iraq, but expressed his recognition of the ongoing threat. Applicant's relationship with his relatives also creates a potential conflict of interest between his obligation to protect sensitive information or technology and his desire to help family members living in Iraq should they be threatened. The evidence is sufficient to raise these disqualifying conditions, shifting the burden to Applicant to prove mitigation.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns. Those with potential application in mitigating the security concerns in this case are:

- (a) the nature of the relationship with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

² 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).

(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.

Applicant did not establish that it is unlikely that 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 as a consequence of his and his wife's many longstanding and commendable relationships with their family members in Iraq. Those connections create continuing and significant potential for conflict of interest and risk of coercion, exploitation, manipulation, or pressure. Applicant has demonstrated courage and compliance with U.S. security procedures in the face of significant potential personal risk arising from his collaboration with U.S. forces in Iraq. Under Appeal Board precedent, this weighs favorably in assessing his likelihood of resolving future conflicts in favor of U.S. interests. However, his other connections to the United States are relatively minimal and recent. Accordingly, Applicant failed to establish sufficient mitigation with respect to those relationships under AG ¶¶ 8(a), (b), or (c).

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 guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. The Guideline B security concerns do not arise from any questionable conduct by Applicant, but rather circumstances that are normal results of his commendable family relationships. Applicant is a mature person, who gained U.S. residence as a refugee after providing linguist services to U.S. and coalition forces in Iraq. He has been a naturalized citizen since 2015, and began working again as a linguist for U.S. Army forces in Iraq in 2018. His spouse and children are also naturalized U.S. citizens, who also retain their Iraqi citizenship. There is no evidence or allegation that he has ever taken any action that could cause potential harm to the United States. However, his ongoing concern for, and relationships with, his numerous family members, who are citizens and residents of Iraq, create significant and ongoing potential for pressure, coercion, exploitation, or duress.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole-person, I conclude Applicant did not meet his burden to mitigate the foreign influence security concerns raised by the facts of this case. Overall, the record evidence leaves me with substantial 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.c:	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 eligibility for access to classified information. National security eligibility is denied.

DAVID M. WHITE
Administrative Judge