



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



In the matter of:)
)
) ISCR Case No. 19-00525
)
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*
02/19/2020

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

Applicant failed to mitigate security concerns raised by his criminal conduct, personal conduct, and foreign family members. Eligibility for access to classified information is denied.

History of Case

Applicant submitted a security clearance application (SCA) on December 7, 2017. On March 14, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guidelines J (Criminal Conduct), E (Personal Conduct), and B (Foreign Influence). Applicant answered the SOR on April 26, 2019, and requested a hearing before an administrative judge (Answer). I was assigned to the case on June 20, 2019, and I issued an order to both parties to produce their documentary evidence by July 22, 2019. On July 8, 2019, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for August 7, 2019. On August 2, 2019, with Applicant’s approval, the hearing was rescheduled for August 6, 2019.

I convened the hearing as scheduled. Government’s Exhibits (GE) 1 through 11, were admitted without objection. Applicant testified and requested that the record be held open until August 20, 2019, to allow him time to submit documentation. On August 21,

2019, Applicant requested an extension to submit documentation. A new suspense date of August 26, 2019, was set without objection. Applicant did not submit documentation. I received the completed transcript (Tr.) on August 20, 2019, and the record closed on August 26, 2019.

Administrative Notice

I took administrative notice of facts concerning Iraq. Those facts are set forth in the Government's Request for Administrative Notice for Iraq, marked as HE I. These documents are included in the record. The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. Those facts are set out in the Findings of Fact, below.

Findings of Fact

Applicant is 22 years old, and he was born in the United States. He is engaged, and his fiancée has a young son who resides with them. He attended school in Iraq and received a high school certificate in 2012, but he does not have a general education diploma. Applicant has worked as a mortgage broker since May 2019. This is Applicant's first application for a DOD security clearance. He is seeking a security clearance to be a linguist for a defense contractor in Iraq, which would increase his salary. (GE 1; Tr. 9-12, 20-23, 26-28, 57-58)

Criminal Conduct:

In March 2012, Applicant was arrested for domestic assault and battery after he punched his stepmother twice in the face, breaking her nose. He was 14 at the time of the arrest, and as a result he spent a month in juvenile detention. After this incident, Applicant's father sent him to live in Iraq with Applicant's aunt. (GE 2 at 7; GE 4; GE 3 at 3-4; GE 4; Tr. 59-61)

In October 2013, Applicant was arrested for domestic assault and battery. His father called the police after Applicant broke his father's car windows. Applicant's father told the police that Applicant was using marijuana. Applicant was put in a juvenile home for approximately one month after this incident, and the charges were ultimately dismissed. (GE 3 at 5; GE 4; GE 5; Tr. 60-61, 68-69)

In June 2014, Applicant was arrested for failure to stop after a personal injury accident, and failure to have insurance. Applicant struck a motorcycle and fled the scene. Applicant and his friend were chasing an individual who took marijuana from Applicant's friend. Applicant pled guilty in 2015, after he was released from prison for the crime alleged in SOR allegation 2.d., and he received six months of probation. Despite his guilty plea, Applicant claimed he allowed his friend to drive his vehicle, and he was a passenger in his own vehicle. Applicant accepted responsibility for the accident because his friend had a suspended license. (GE 1; GE 2 at 7; GE 3 at 7; GE 6; Tr. 69-77)

In August 2014, Applicant was charged with aggravated assault. Applicant was 17, and his brother, who was 14, called the 18-year-old victim multiple times until the victim met Applicant, his brother, and two of their friends in a parking lot. Applicant's brother threw the first punch, Applicant then punched the victim in the head, but claims he only punched him once, and then one of their friends punched the victim once. The victim suffered a broken jaw, a broken nose, required stitches, and reconstructive surgery. Applicant pled not guilty. He was tried as an adult, and a jury convicted him. Applicant was sentenced to 365 days in jail. He was released two months early for good behavior. (GE 1 at 27-28; GE 2 at 7; GE 3 at 4; GE 4; GE 7; Tr. 24, 77-88)

In September 2014, Applicant was arrested for driving while his license was suspended, operation of a vehicle without registration plates, and no insurance. He was sentenced to six months of probation. He had just purchased a vehicle from Craig's List, and he was using a screwdriver as a key. At that time, he had a suspended license; therefore, he could not obtain registration plates. The incident occurred before he was sentenced for the incident alleged in SOR allegation 2.d. (GE 8; Tr. 89-92)

In July 2015, Applicant was arrested due to outstanding warrants for driving while his license was suspended, no registration, failure to stop after an accident, and no insurance. The outstanding warrants were related to the September 2014 incident alleged in SOR allegation 2.c. Applicant failed to resolve these issues in SOR allegation 2.c due to being incarcerated for ten months. Applicant pled guilty to three of the charges, and in exchange the other three charges were dropped. He received six months of probation. (GE 4; GE 9; Tr. 92-93)

In May 2016, Applicant was pulled over and ticketed for no insurance and registration violation. He had insurance and registration, but he did not have the documentation with him at the time of the traffic stop. The charges were eventually dismissed. (GE 10; Tr. 93)

In May 2018, Applicant was ticketed for failure to display a valid license. He did not have a valid license, but not on him when he was pulled over by the police. The charge was dismissed. (GE 11; Tr. 93-94)

Applicant has not been arrested or ticketed since 2018, and he has no unresolved criminal issues. (Tr. 58, 89)

Personal Conduct

All of the Guideline J allegations were cross alleged under Guideline E.

At the hearing, Applicant admitted using marijuana from 2012 until sometime in 2014, when he went to prison for the crime alleged in SOR allegation 2.d. He used marijuana approximately 20 times in his life, and he sold marijuana for six months to friends. Applicant did not disclose marijuana involvement in his December 2017 SCA, in his January 2018 counterintelligence screening interview (CSI), and in his February 2018

subject interview. At the hearing, he admitted to lying about his drug involvement. Applicant's failure to self-report his marijuana use was not alleged in the SOR and will not be considered disqualifying in the determination of his security clearance. (GE 1; GE 2 at 11; GE 3; Tr. 62-67)

Applicant testified that he has turned his life around in the past several years and no longer associates with individuals who use drugs or are involved in criminal activity. He now accepts responsibility for his actions and strives to be a positive person. (Tr. 67-68, 76-77, 97-98)

While working at the airport from 2016 to 2018, Applicant was promoted multiple times. He left this job in July 2018, because he obtained his real estate license and became a realtor. (Tr. 23-26)

Guideline B:

Applicant's father was born in Iraq. In 1991, he fled to the United States as a refugee and was subsequently naturalized. Applicant's father owns property in Iraq, and he served as a linguist for a defense contractor from approximately 2007 to 2009. Applicant's father's sister and her family are citizens and residents of Iraq. (GE 1; GE 2; GE 3 at 2; Tr. 29-31, 37-38)

Applicant does not own property or have financial assets in Iraq. Applicant lives in his fiancé's home, but does not own any real estate. His assets total approximately \$5,000. In his CSI, Applicant told the investigator that he had equal loyalties to the US and Iraq. At the hearing, Applicant indicated that he would not want to have to choose between the two countries, but he would choose the US over Iraq. (GE 2; Tr. 30-32)

Applicant's aunt is a citizen and resident of Iraq. She lives near the Kuwait border and sells homemade pickles. She has never been associated with the Iraqi government. Applicant communicated electronically with her and his cousins once a week until approximately two to three years ago. (GE 3 at 3; Tr. 36-37, 44, 46-48)

Applicant is solely a United States citizen; however, he lived in Iraq with his father from January 2003 to January 2006. They lived with his father's sister and her children. Applicant's father sent Applicant to Iraq to live with his aunt in January 2008, and he lived with her for a year. After the arrest listed in SOR allegation 2.a, Applicant's father sent him to Iraq to live with his aunt from March 2012 until December 2012. (GE 2; Tr. 21, 33-37, 39-43, 46)

Applicant visited Iraq for two weeks in October 2017, and stayed with his aunt for a day. He went to Iraq for a family wedding. Applicant is not aware of his cousins having any ties to the Iraqi government. (GE 1 at 24; GE 2; Tr. 34, 42-43, 53)

Applicant does not consider himself to be close to his aunt, despite living with her for three significant periods during his childhood and maintaining weekly electronic

communications with her and her sons until approximately three years ago. (Tr. 48-49, 51-52)

Iraq

The U.S. Department of State warns that travel within Iraq remains very dangerous and the ability of the U.S. Embassy to assist U.S. citizens is extremely limited. U.S. citizens in Iraq are at high risk for kidnapping and terrorist violence. Numerous terrorist and insurgent groups are active in Iraq, including ISIS. Such groups regularly attack Iraqi security forces and civilians. Anti-U.S. sectarian militias may also threaten U.S. citizens and western companies throughout Iraq. (HE I)

Severe human rights problems are widespread in Iraq. Sectarian hostility, widespread corruption, and lack of transparency at all levels of government and society weakened the government's authority and worsened effective human rights protections. Problems include harsh and life-threatening conditions in detention and prison facilities; arbitrary arrests and lengthy pretrial detention; limits on freedom of expression to include press, social, religious and political restrictions in academic and cultural matters; discrimination against and societal abuse of women and ethnic, religious, and racial minorities; seizure of property without due process and limitations of worker rights. (HE I)

Policies

This case is adjudicated 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 (AG), which became effective on June 8, 2017.

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 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(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 “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

According to 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.” The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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

Guideline J: Criminal Conduct

AG ¶ 30 expresses the security concerns pertaining to criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. Two are potentially applicable in this case:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Applicant's eight arrests between 2012 and 2018 establish the above conditions. AG ¶ 32 provides conditions that could mitigate security concerns raised in this case. The following two are potentially applicable:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

It has been over a year since Appellant's last traffic incident. Between 2012 and 2018, he was arrested and convicted of multiple criminal offenses, including assault against two separate individuals. His history of traffic violations, indicate a failure to follow rules and regulations, and demonstrate a lack of responsible behavior. Given the seriousness of several of the convictions and the ongoing nature of his traffic violations, mitigation under AG ¶¶ 32(a) and 32(d) was not established.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes the following condition that could raise a security concern and be disqualifying in this case:

(c) credible adverse information in several adjudicative issues that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics that the individual may not properly safeguard classified or sensitive information.

Appellant's behavior since at least 2012 demonstrates questionable judgment, unreliability, and an unwillingness to comply with rules and regulations, establishing the above condition. AG ¶ 17 provides conditions that could mitigate security concerns raised under this guideline. One condition is potentially applicable:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant has not demonstrated that his behavior has significantly changed. At the hearing, he admitted to lying about his drug involvement in his: December 2017 SCA; January 2018 counterintelligence screening interview (CSI); and February 2018 subject interview. His failure to be honest and forthright with the government multiple times regarding his drug involvement, coupled with his history of criminal activity is deeply concerning, and continues to reflect negatively on his reliability, trustworthiness, and good judgment. Mitigation was not established under AG ¶ 17(c).

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 includes several conditions that could raise security concerns under AG ¶ 7. The following 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).

Applicant has ongoing familial connections with his aunt in Iraq. Although he testified that he has had no contact with her for approximately two to three years, he lived with her and her family multiple times between 2003 and 2012, and he visited her in 2017. Applicant's relationship with his aunt creates a heightened risk of foreign pressure or attempted exploitation because of the risk of terrorism in Iraq. The record evidence is sufficient to raise these disqualifying conditions.

After the Government produced substantial evidence of those disqualifying conditions, the burden shifted to Applicant to rebut them or otherwise prove mitigation. The guideline includes several conditions that could mitigate security concerns under AG ¶ 8. The following are potentially applicable in this case:

- (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.

Applicant is a natural-born citizen of the United States; as such, his ties to the United States are substantial. However, he lived in Iraq with his aunt between 2003 and 2006, from 2008 to 2009, and for ten months in 2012. He visited her in 2017. These contacts are not casual or infrequent. Additionally, he has not demonstrated that his ties and allegiance to Iraq are minimal, or he can be expected to resolve conflict or interest in favor of the U.S.

The instability and risk of terrorism in Iraq present an unacceptable risk that Applicant may be placed in a position of having to choose between the interests of a foreign individual, group, or government and the interests of the United States. Mitigation was not established under AG ¶¶ 8(a), 8(b), and 8(c).

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under the guideline at issue in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under this guideline, and evaluating all the evidence in the context of the whole person, Applicant has not mitigated the security concerns at issue. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the interests of national security of the United States to grant him eligibility for access to classified information.

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
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a-2.h:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is denied.

CAROLINE E. HEINTZELMAN
Administrative Judge