



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



In the matter of: )  
)  
) ISCR Case No. 19-00832  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Mary Margaret Foreman, Esq., Department Counsel  
For Applicant: *Pro se*  
**01/28/2020**

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**Decision**

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HEINTZELMAN, Caroline E., Administrative Judge:

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

**History of Case**

Applicant submitted a security clearance application (SCA) on August 8, 2018. On June 17, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline B (Foreign Influence). Applicant answered the SOR on July 24, 2019, and requested a decision on the written record without a hearing. (Item 1; Item 2)

On August 29, 2019, a complete copy of the File of Relevant Material (FORM), containing six Items, was mailed to Applicant. He received the FORM on September 23, 2019. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant did not respond to the FORM. The case was assigned to me on December 4, 2019. Items 1 through 5 are admitted into evidence without objection.

## **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 Item 6. 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 40 years old, single, and has no children. He was born in Iraq and immigrated to the United States in October 2010. He was naturalized in August 2016. Applicant has worked for his current employer as a physical therapist assistant since February 2018. He is seeking a security clearance to work as a linguist for a defense contractor in Iraq. (Item 3; Item 4; Item 5)

Applicant received a bachelor's degree from an Iraqi university in 2003. He worked as a local-hire translator for the U.S. military from August 2008 until October 2010, when he immigrated to the United States. Since he moved to the United States., Applicant received a certification in an undisclosed field and an associate's degree from U.S. institutions. (Item 3; Item 4; Item 5)

Applicant's father, two brothers, and two sisters are residents and citizens of Iraq. Additionally, his aunt and brother-in-law are residents and citizens of Iraq. When Applicant's mother passed away in 2018, he returned to Iraq for her funeral. During the three weeks he was in Iraq, he stayed with his family. (Item 3; Item 4; Item 5)

None of Applicant's family members are employed by the Iraqi government or military. He has varying contact with them via phone conversations and text messages. The last time he saw his family was during his 2018 visit to Iraq. Applicant gave his brother \$5,000 to help pay for his mother's funeral expenses. He had previously given him a total of \$2,000 between 2012 and 2014. (Item 4; Item 5)

When Applicant's mother passed away, he inherited 20 percent of her home, which is worth an estimated \$50,000. During his September 2018 personal subject interview, he indicated that he intended to retain his share of the family home and would also stay there when he visited his family. In his answer to the SOR, Applicant stated that the home is for sale. (Item 1; Item 4; Item 5)

There is no evidence that Applicant owns a home or other property in the United States. Nor does he have any family living in the United States. (Item 3; Item 4; Item 5)

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 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;
- (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; and

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

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 father and four siblings in Iraq. He has provided them with financial support and visited them in 2018. Applicant's relationship with these family members creates a heightened risk of foreign pressure or attempted exploitation because of the risk of terrorism and human rights abuses in Iraq. The record evidence is sufficient to raise these disqualifying conditions.

Applicant owns a portion of his mother's home in Iraq, worth approximately \$10,000. There is no evidence that he owns property in the United States, nor did he provide information as to financial interests in the United States.

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;

(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; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant has lived in the United States since August 2010; however, there is no evidence that he has significant familial or financial ties in the United States. 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 United States. Even though he worked as a local-hire translator for U.S. Forces, he did not provide sufficient information about his duties then to conclude that he has any deep seated ties to the U.S.

The instability, human rights abuses, 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), 8(c), or 8(f).

### **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 – 1.d:

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.

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CAROLINE E. HEINTZELMAN  
Administrative Judge