



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



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 19-01046
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Applicant for Security Clearance)

Appearances

For Government: Eric Price, Esq., Department Counsel
For Applicant: Alan Edmunds, Esq.

05/20/2020

Decision

MALONE, Matthew E., Administrative Judge:

The presence of close personal relationships in Iraq presents a heightened risk of manipulation or inducement to act in a way inconsistent with U.S. interests. The security concerns raised by Applicant’s ties to family members residing in, and who are citizens of, Iraq are not mitigated. His request for a security clearance is denied.

Statement of the Case

On August 30, 2017, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain eligibility for a security clearance required for his employment with a federal contractor. Based on the results of the ensuing background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the interests of national security for Applicant to have a security

clearance, as required by Security Executive Agent Directive (SEAD) 4, Section E.4, and by DOD Directive 5220.6, as amended (Directive), Section 4.2.

On July 15, 2019, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns articulated in the adjudicative guidelines (AG) issued by the Director of National Intelligence on December 10, 2016, to be effective for all adjudications on or after June 8, 2017. Specifically, this case is governed by Guideline B (Foreign Influence).

Applicant timely responded to the SOR (Answer) and requested a hearing. With his response, he proffered Applicant's Exhibits (AX) A – H. I received the case on November 25, 2019, and convened the requested hearing on January 30, 2020. Department Counsel proffered Government Exhibits (GX) 1 – 3. Appellant appeared as scheduled, testified, and proffered AX I - U. All exhibits were admitted without objection. Additionally, five witnesses testified for Applicant. The record closed on February 3, 2020 when I received two post-hearing submissions from Applicant. Those documents have been admitted, without objection, as AX V (Certificate of Appreciation, one page) and W (2019 IRS Form 1098, one page). I received a transcript of the hearing (Tr.) on February 10, 2020.

Department Counsel also submitted three administrative exhibits included in the record as Hearing Exhibit (HX) 1 (Index of Government Exhibits, one page), HX 2 (Department Counsel Discovery Letter, dated September 20, 2019, two pages), and HX 3 (Department Counsel's Request for Administrative Notice re Iraq, dated January 23, 2020 (seven pages). With HX 3, Department Counsel included 16 exhibits (Items I – XVI) in support of the request for administrative notice. After allowing Applicant's counsel to be heard in response to the motion, I granted Department Counsel's request and have considered herein the information provided as appropriate. (Tr. 14 – 15)

Findings of Fact

In the SOR, the Government alleged that Applicant's wife is a citizen and resident of Iraq (SOR 1.a), and that his mother-in-law and father-in law, a former senior official in the Iraqi government, are Iraqi citizens residing in Iraq (SOR 1.b). It was also alleged that Applicant has two sisters-in-law who live in Iraq and are Iraqi citizens (SOR 1.c), and that his extended family members and associates are citizens of and reside in Iraq, some of whom have or are serving in the Iraqi government and military (SOR 1.d).

In response to the SOR, Applicant admitted with explanations all of the SOR allegations. In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is 49 years old and employed as a linguist by a defense contractor for work in support of U.S. military missions in the Middle East. He was born and educated in Iraq, receiving a bachelor's degree from an Iraqi university in 2006. In 2005, one of

Applicant's professors warned him that a militia of Shi'ite Muslims was targeting Applicant, who is a Sunni Muslim, for assassination and that he should leave the country. Applicant fled to Jordan for a few months until the professor called him to say it was safe to return. Applicant left Iraq for good in July 2007, moving first to Egypt, where he lived until March 2008. At that time, Applicant left Egypt for Jordan, where he lived until immigrating to the United States in June 2009. Applicant became a naturalized U.S. citizen in August 2014. (Answer; GX 1 – GX 3)

When Applicant submitted his e-QIP in August 2017, he declared that he was single; however, in December 2016, he had travelled to Iraq to meet the woman who is now his wife. Theirs is an arranged marriage that was made official in Iraq in January 2017. Nonetheless, Applicant identifies June 2018 as the start of his marriage. It was then that he returned to Iraq to bring his wife to the United States, where the marriage was consummated. They now have one child, who was born in the United States in May 2019. His wife is still an Iraqi citizen and recently became a permanent resident alien. She will begin her application for U.S. citizenship as soon as she is able. (Answer; GX 1 – 3; AX C; AX D; Tr. 26 – 27, 35 – 36, 58, 62 – 64)

Applicant initially planned to meet his wife in Jordan to accompany her back to the United States. He was hesitant to travel all the way to Iraq to meet his wife because he feared for his safety. In the end, he travelled to Iraq on an Iraqi passport he had renewed when he was in Iraq to marry his wife in January 2017. For that trip, he also used an Iraqi passport. Applicant has since relinquished his Iraqi passport to his employer's facility security officer (FSO) and expressed a willingness to formally renounce his Iraqi citizenship. (Answer; GX 3; Tr. 46 – 47)

Applicant's parents, who were naturalized as U.S. citizens in 2015, and one of his brothers, who became a U.S. citizen in December 2019, live with Applicant and his wife in a house Applicant bought in August 2012. Applicant also has two brothers living in the United States who are still Iraqi citizens and not yet permanent resident aliens here. Applicant's wife's parents and siblings are Iraqi citizens and still reside in Iraq. His father-in-law retired in 2011 after a 26-year career as a senior official in the Iraqi government. Applicant has had little contact with his wife's relatives since he went to Iraq to marry his wife in 2017; however, his wife is very close with her family and communicates with them as often as daily. (Answer; AX G; AX H; AX Q; GX 1 – 3; Tr. 28, 33, 36 – 37, 48 – 52)

Applicant's father is a retired Iraqi diplomat and press official, and his mother did not work outside the home. Applicant's parents left Iraq for Jordan in 2000 because his father was at risk of incarceration or worse at the hands of the Saddam Hussein regime. After living in both Jordan and Egypt, they immigrated to the United States in 2011. (Answer; GX 1 – 3)

Applicant also has extended family and other associates in Iraq, most of whom live in or near Baghdad. His family members are cousins, aunts and uncles on his mother's side. Many of them were or are employed by the Iraqi government or served in the Iraqi

military after the Hussein regime was ousted in 2003 during Operation Iraqi Freedom. He has had contact as often as monthly with some of those relatives. One of his associates is a retired pilot in the Iraqi air force who has served as a mentor to Applicant. Others are old friends or classmates. Applicant insists that he ended all contact with these family and friends in Iraq in 2018 due to security concerns associated with his employment in support of the U.S. military. (Answer; GX 1 – 3; Tr. 37 – 38, 41)

Applicant's request for a security clearance was sponsored by a defense contractor who hired him in July 2017 for work as a linguist supporting a military mission in a country other than Iraq. Applicant now works for a different company doing similar work, and he indicated he was returning overseas for that work soon after his hearing. His deployment is due to end in October 2020. He also indicated that if he receives a clearance for his current position, he would likely be sent to Iraq, specifically to Baghdad. Applicant's wife, who communicates regularly with her parents and sisters, is aware that Applicant requires a security clearance for his work. (GX 1; AX M; AX R; AX T; Tr. 32 – 35, 42 – 45)

Applicant's work with the military has earned him praise for his dedication and professionalism. A senior noncommissioned officer with whom Applicant worked closely for several months in 2019 believes Applicant "has shown tremendous loyalty, trustworthiness and reliability" and recommends Applicant for a security clearance. (Answer; AX O; AX V)

To properly assess the security significance of these facts within the adjudicative guideline at issue, I have taken administrative notice of certain facts regarding Iraq as presented in HX 3 and its supporting documents. Of particular note is the continued inability of Iraq's freely-elected government to quell violence and instability that persist in parts of Iraq. These conditions are fueled and perpetrated by terrorist groups affiliated with Al-Qaeda and ISIS, as well as by Sunni insurgents and Iranian-backed Shiite militias. As a result, some parts of Iraq remain wholly unstable. Even the city of Baghdad is still subject to random acts of terrorist violence.

U.S. citizens and interests in Iraq remain at high risk for kidnapping and terrorist violence. The U.S. State Department has advised against all individual travel to Iraq. The ability of the U.S. Embassy to provide consular services to U.S. citizens outside Baghdad and the southern city of Basra is extremely limited given the security environment. ISIS again controls significant portions of Iraq's territory, and numerous other terrorist and insurgent groups are active in Iraq. Such groups regularly attack both Iraqi security forces and civilians. Anti-U.S. sectarian militias may also threaten U.S. citizens and western companies throughout Iraq. U.S. Government and western interests remain possible targets for attacks. Additionally, there are significant human rights problems in Iraq. Widespread corruption, as well as abuses by Iraqi security forces in response to acts of violence by terrorists and others, have undermined confidence in the Iraqi government and its judiciary. Human rights violations by Iraqi law enforcement are not uncommon and are not being addressed when identified. Those include killing, kidnapping, and extorting

civilians, as well as inhumane conditions in detention and prison facilities, arbitrary arrest and lengthy pretrial detainment, denial of fair public trial, limits on freedom of expression, freedom of the press, censorship of religion, limits on peaceful assembly, and societal abuses of women. The various terrorist and militia organizations are also responsible for significant human rights abuses in Iraq.

Applicant is loyal to the United States and expressed pride in the work he does for the U.S. military. All of his personal and financial assets are in this country. Beginning in January 2017, he provided his wife in Iraq about \$300 each month for support; however, that support stopped when his wife immigrated to the United States in June 2018. Applicant has not provided financial support to anyone else in Iraq. He is registered to vote in the United States and he meets all of his income tax reporting obligations as required. In September 2018, Applicant received a master's degree in business administration from a U.S. university. (Answer; GX 3; AX I - M; AX B; AX S; AX W; Tr. 28 – 31)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). (See Directive, 6.3) Decisions must also reflect consideration of the factors listed in ¶ 2(d) of the guidelines. Commonly referred to as the “whole-person” concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest for an applicant to either receive or continue to have access to classified information. (Department of the Navy v. Egan, 484 U.S. 518 (1988))

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged

in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion. (See Egan, 484 U.S. at 528, 531) A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. (See Egan; see also AG ¶ 2(b))

Analysis

Foreign Influence

The security concern under this guideline is stated at 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.

Applicant's immediate family now resides in the United States. His parents, one of his three brothers, and his infant child are U.S. citizens. Only his wife has permanent resident alien status. He still has numerous relatives on his mother's side who are citizens of and live in Iraq. Many of them have or had longstanding connections to the current Iraqi government. He also has several friends who live in Iraq, some of whom have similar governmental connections. Applicant's wife's parents and sisters live in Iraq and she has regular contact with them. He does not communicate directly with them and he claims he does not have close relationships with them. Nonetheless, his close relationship with his wife and her close ties of affection to her parents and sisters create a rebuttable presumption that he has close relationships to her family. Aside from his claims he does not have contact with his wife's family, Applicant did not present information that would rebut that presumption.

As to whether Iraq presents a heightened risk of pressure or coercion, Applicant has had firsthand experience with threats of physical violence from factions inside Iraq. His claims that he has not communicated with anyone he knows in Iraq since 2018, while

prudent, is also a recognition of the security issues associated with personal contacts in Iraq. Combined with information not reasonably subject to dispute about Iraq and the unstable environment there, all of the foregoing requires application of the following AG ¶ 7 disqualifying conditions:

(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

(e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

By contrast, I have considered the following pertinent AG ¶ 8 mitigating conditions:

(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's relationships in Iraq are not casual. Additionally, many of his extended family members, associates, and in-laws have ties to the Iraqi government. While the Iraqi government itself might not act to pressure or coerce those contacts, the instability and lack of respect for civil liberties engendered by Iraq's inability to stabilize its internal affairs poses a very real threat to U.S. persons and interests there. Those same issues have given rise to terrorists and radical militias known to target U.S. citizens and those who side with U.S. interests in Iraq.

Applicant has lived and worked in the United States since 2009. Although his sense of loyalty to the United States is significant, that information is not sufficient to outweigh the heightened risk of coercion presented by the presence of his extended

family, his wife's family, and other associates in Iraq. I conclude none of the AG ¶ 8 factors can be applied here. The security concerns about foreign influence are not mitigated.

I also evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). It cannot be disputed that Applicant is a loyal American citizen and is dedicated to his work with the military overseas. He recently married and started a family. In the context of assessing an individual's suitability for access to classified information, however, his circumstances must be examined with the protection of the national interest in mind. These decisions are a recognition of the heightened risks associated with Applicant's close ties of affection for persons who reside in a country known, in this case, to present a very real danger to those persons from groups seeking to harm U.S. interests. The state of affairs in Iraq and Applicant's personal ties in that country sustain doubts about the suitability of granting him access to classified information. Because protection of the interests of national security is the principal focus of these adjudications, those doubts must be resolved against the Applicant's request for clearance.

Formal Findings

Formal findings 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:	For Applicant
Subparagraphs 1.b – 1.d:	Against Applicant

Conclusion

It is not clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge