



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



In the matter of:)
)
 ---) ISCR Case No. 19-01579
)
 Applicant for Security Clearance)

Appearances

For Government: Tara R. Karoian, Esquire, Department Counsel
For Applicant: *Pro se*

03/20/2020

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding foreign influence. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On March 30, 2018, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86). The Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him on June 7, 2019, under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4), *National Security Adjudicative Guidelines* (AG) (December 10, 2016), for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position, effective June 8, 2017.

The SOR alleged security concerns under Guideline B (Foreign Influence) and detailed reasons why DOD was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The DOD adjudicators recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In an unsworn statement, dated July 19, 2019, Applicant responded to the SOR and he elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was initially mailed to Applicant on September 12, 2019, and, for unspecified reasons, re-mailed on September 20, 2019, and he was afforded an opportunity, within 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Guidelines applicable to his case. Applicant received the FORM on October 5, 2019. Although a response was due by November 4, 2019, as of March 18, 2020, Applicant had not responded to the FORM. The case was initially assigned to another administrative judge on November 22, 2019, but was reassigned to me on March 18, 2020.

Rulings on Procedure

Department Counsel requested that I take administrative notice of certain enumerated facts pertaining to the Federal Republic of Iraq (Iraq), appearing in extracts of 12 U.S. Government publications that were published by the U.S. Department of State, the U.S. Department of Homeland Security, and the U.S. Director of National Intelligence, as well as two citations to public law. Facts are proper for administrative notice when they are easily verifiable by an authorized source and relevant and material to the case.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986); 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)). The most common basis for administrative notice at ISCR proceedings, is to notice 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). Requests for administrative notice may utilize authoritative information or sources from the internet. See, e.g. *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006) (citing internet sources for numerous documents). In this instance, although Department Counsel has selected only certain facts appearing in the identified publications, I have not limited myself to only those facts, but have considered the publications in their entirety.

After weighing the reliability of the source documentation and assessing the relevancy and materiality of the facts proposed by the Government, pursuant to Rule 201, *Federal Rules of Evidence*, I take administrative notice of certain facts, as set forth below under the Iraq subsection.

Findings of Fact

In his Answer to the SOR, Applicant admitted, with comments, all of the factual allegations pertaining to foreign influence (SOR ¶¶ 1.a. through 1.c.). Applicant's admissions and comments are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Background

Applicant is a 37-year-old Iraqi-born, naturalized U.S. citizen, whose parents, siblings, and in-laws are Iraqi citizen-residents. As a linguist, in 2012, Applicant emigrated from Iraq to the United States under the Special Immigrant Visa for Iraqi Translators Program (SQ1) because he had previously served as a linguist-translator with the U.S. Army in Iraq from February 2005 until November 2011, during a period of increased hostilities and military action, and he contributed to the missions of the United States at personal risk on behalf of U.S. combat forces in Iraq. He was married in Iraq in 2008, and his wife accompanied him to the United States in 2012. He has not reported any children. He became a naturalized U.S. citizen in 2017, and although Department Counsel indicated that Applicant's wife was naturalized the following year, there is no evidence in the file to confirm that date. Applicant is considered to be a part-time "prospective" employee of a defense contractor, since March 2018, and he will be serving as a linguist-translator, to be deployed to Iraq. All of Applicant's formal education, including elementary, high school, and college, was received in Iraq. He received a bachelor's degree in Iraq in 2005. However, he has attended classes at a local college in the United States in an effort to obtain a General Educational Development (GED) diploma, but as of April 2018, no such diploma had been awarded to him. He has never served as a member of the U.S. military or of any foreign military. He has never been granted a security clearance. He has no financial interests outside of the United States.

Foreign Influence

General source information pertaining to the foreign influence issues discussed below can be found in the following exhibits: Item 3 (SF 86, dated March 30, 2018); Item 2 (Answer to the SOR, dated July 17, 2019); Item 5 (Enhanced Subject Interview, dated April 20, 2018); Item 4 (Investigative Findings; Counterintelligence Focused Security Screening Questionnaire (CIFSSQ); List of Foreign Travel; List of Relatives and Associates (LRA); List of Developed Relatives and Associates; List of Relatives and Associates Military & Government Service (LRAM&GS); and List of Developed Relatives and Associates Military & Government Service, all dated August 16, 2018).

From about 1999 until about 2001, Applicant was forced to join the Arab Socialist Ba'ath Party which was headquartered in Baghdad, Iraq, until 2003, in order to attend college after graduating from high school. While affiliated, he did not perform any duties, he did not hold any rank, he did not pay any fees, and he did not attend any meetings. His past membership in the Ba'ath Party does not present a counterintelligence (CI) or foreign preference (FP) risk according to U.S. counterintelligence authorities. However,

because Applicant's National Intelligence Agency Checks (NIAC) were incomplete at the time of his screening in August 2018, and the completed portions contained no derogatory information, until the checks are completed, there is a potential CI/FP risk. (Item 4 (Investigative Findings), at 2-3; Item 4 (CIFSSQ), at 5))

Because of the draw-down of U.S. Forces in Iraq in 2011, Applicant decided to leave Iraq as well because he felt his life would be in danger for supporting those U.S. Forces as a local-hire linguist for seven years. (Item 4 (CIFSSQ), at 1) In 2018, he described his feelings for Iraq: "I feel it's unsafe for everyone, not just ME . . . if it was up to ME I wish I can bring all of MY family . . . the safety and environment is very poor. Security is really bad because it is controlled by Iran. I feel scared for MY family" (Item 4 (CIFSSQ), at 3) In 2019, he reaffirmed his desire to bring his entire family to the United States. (Item 2)

When questioned about having any concerns about working for the United States in Iraq, and how he would handle those concerns, Applicant replied: "No . . . if I ever accept an offer to go to Iraq I will not let anyone know where I am working . . . I did this job before with the U.S. military, I don't fear anymore." (Item 4 (CIFSSQ), at 8)

Applicant continues to be a dual citizen, despite having renounced his allegiance to Iraq when he took his oath of U.S. citizenship in 2017. That oath is as follows:

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the Armed Forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God.

<https://www.uscis.gov/us-citizenship/naturalization-test/naturalization-oath-allegiance-united-states-america>

When questioned by an investigator from the U.S. Office of Personnel Management (OPM) in April 2018, he acknowledged that he maintains dual citizenship, and that he had taken no action to renounce it. He explained that his inaction was associated with the fact that his parents and in-laws remain in Iraq, and his family keeps him "tethered" to Iraq. (Item 5, at 1) However, during his August 2018 counterintelligence interview, when asked about having allegiance to any country over the United States, he insisted that "[b]ecause everything changed, I don't feel like it's MY country anymore . . . government, politics, and even people." (Item 4 (CIFSSQ), at 1) In his Answer to the SOR, he added: "[M]y allegiance and my family allegiance are to the United States of America

. . . My loyalty is only to the United States. I have nothing . . . that will limit my loyalty, service to the United States. . . .” (Item 2)

As noted above, Applicant’s parents, siblings, and in-laws are Iraqi citizen-residents. His mother, a woman in her 70s, is currently a housewife, and she retired as a school librarian a decade ago; his father, also in his 70s, retired as an unarmed school security guard a decade ago after being drafted into the Iraqi Army in 1987, and being wounded; a brother, in his 40s, is with the Ministry of the Interior as an armed school and mosque security officer who has never served in the Iraqi Army; another brother, also in his 40s, is an unarmed school front desk security person who has never served in the Iraqi Army; his mother-in-law, a woman in her 60s, is currently a housewife, and she retired as a school archiver over a decade ago. Except as noted above, parents, siblings, and in-laws were never associated with the Iraqi military or intelligence service. As of August 2018, Applicant’s contacts with his family and extended family members varied. He generally spoke to his parents and mother-in-law on a weekly basis, and his two brothers on a monthly basis. He last had contact with his father-in-law over a decade ago. (Item 3, at 28-39; Item 5, at 8-10; Item 4 (LRA), at 1-3; Item 4 (LRAM&GS).

Iraq

Iraq is a constitutional parliamentary republic in constant turmoil. The outcome of the 2014 parliamentary elections generally met international standards of free and fair elections and led to the peaceful transition of power from former Prime Minister Nuri al-Maliki to Prime Minister Haider al-Abadi. The assessment of subsequent elections has not been reported. On October 2, 2018, Iraqi President Barham Salih selected Adil Abdul-Mahdi to be the Prime Minister of Iraq, and he was given 30 days to form a new government. On October 25, 2018, Abdul-Mahdi was sworn into office, five months after the 2018 elections. However, on November 29, 2019, after weeks of widespread demonstrations against a government that protesters considered corrupt, failing to provide them with basic services, and beholden to powerful neighboring Iran, Mahdi resigned his post, and the Iraqi parliament approved his resignation on December 1, 2019. He was scheduled to continue on in a caretaker role until parliament approved a full-time replacement. On February 1, 2020, Mohammed Tawfik Allawi was nominated to serve as Prime Minister of Iraq, but he withdrew his candidacy on March 1, 2020, after parliament failed for the second time in a week to approve his cabinet. On March 17, 2020, Adnan al-Zurfi, a former official of the Iraq Reconstruction and Development Council (IRDC) that took over Iraq after the 2003 U.S. invasion that deposed former ruler Saddam Hussein, was designated to become Prime Minister, drawing criticism from Iran’s allies in the country amid new tensions between Washington and Tehran.

In August 1990, Iraq invaded neighboring Kuwait and declared its annexation into Iraq. Despite United Nations (UN) disapproval of the action, Iraq refused to withdraw from Kuwait. In January 1991, a coalition of nations, led by the United States, launched military operations against Iraq, called Operation Desert Storm. The Iraqi Army was crushed. No-fly zones were established in Iraq, banning Iraq from using all aircraft in the designated no-fly zones. After several years of Iraqi non-compliance with established UN resolutions and requirements, in March 2003, the United States and another coalition of nations

launched another assault on Iraq, called Operation Iraqi Freedom. Some military operations ceased in May 2003, and a provisional government under the IRDC and an American Chief Civilian Administrator was established to decide all Iraqi affairs. Over the ensuing years, hostilities and terrorism continued, and U.S. military operations increased. In 2003, outlawed mid-level and lower level officials of the Ba'ath Party were permitted to return to their previous posts. By late 2010, over 90,000 U.S. troops were withdrawn from Iraq, leaving only a transitional military force to advise and assist security forces, counterterrorism missions, and protect U.S. civilians.

The U.S. Mission in Iraq remains dedicated to building a strategic partnership with Iraq and the Iraqi people. The December 2011 departure of U.S. troops from Iraq marked a milestone in our relationship as Iraq continues to develop as a sovereign, stable, and self-reliant country. Iraq is now a key partner for the U.S. in the region as well as a voice of moderation and democracy in the Middle East. Iraq has functioning government institutions including an active legislature, is playing an increasingly constructive role in the region, and has a bright economic future as oil revenues surpass pre-Saddam production levels with continued rapid growth to come. The U.S. maintains vigorous and broad engagement with Iraq on diplomatic, political, economic, and security issues in accordance with the U.S.-Iraq Strategic Framework Agreement (SFA).

The SFA between Iraq and the U.S. provides the basis for the U.S.-Iraq bilateral relationship. It covers the range of bilateral issues including political relations and diplomacy, defense and security, trade and finance, energy, judicial and law enforcement issues, services, science, culture, education, and environment. Efforts to implement the SFA are overseen by the Higher Coordinating Committee and several Joint Coordination Committees, which meet periodically.

The U.S. Department of State warns that U.S. citizens in Iraq are at high risk for violence and kidnapping, and advises U.S. citizens not to travel to Iraq. The current travel advisory level is Level 4: "Do not travel to Iraq due to terrorism and armed conflict." The U.S. Government considers the potential personal security threats to U.S. Government personnel in Iraq to be serious enough to require them to live and work under strict security guidelines. On May 15, 2019, the U.S. Department of State ordered the departure of non-emergency U.S. government employees from the U.S. Embassy in Baghdad and the U.S. Consulate in Erbil amidst heightened tension with Iran.

The ability of the U.S. Embassy to provide consular services to U.S. citizens outside Baghdad is limited given the security environment. Anti-U.S. sectarian militias may threaten U.S. citizens and western companies throughout Iraq. Kidnappings and attacks by improvised explosive devices (IED) occur in many areas of the country, including Baghdad. Methods of attack have included explosively formed penetrators (EFPs), magnetic IEDs placed on vehicles, human and vehicle-borne IEDs, mines placed on or concealed near roads, mortars and rockets, and shootings using various direct fire weapons. Such attacks may take place in public venues such as cafes and markets.

Iraq witnessed continued terrorist activity in 2016, primarily as a result of the actions of Islamic State of Iraq and Syria (ISIL). In 2016, ISIL remained the greatest

terrorist threat globally, maintaining a formidable force in Syria, including a large number of foreign terrorist fighters. ISIL's capacity and territorial control in Iraq has dramatically eroded in the past two years. According to estimates from the UN Assistance Mission for Iraq, acts of terrorism and violence killed more than 7,000 civilians and injured more than 12,000 in 2016. By the end of 2017, Iraqi Security Forces had liberated all territory from ISIL, drastically reducing ISIL's ability to commit abuses and atrocities. Nevertheless, anti-American/anti-western sentiment exists throughout Iraq, especially among Iran-backed militias. Human rights violations continue to be a problem with allegations of unlawful killings and other abuses being made against the Iraqi Security Forces and Popular Mobilization Forces.

In its annual human rights report, the U.S. Department of State reported that severe human rights problems were widespread. 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. Iraqi Security Forces, members of the Federal Police, and the Peshmerga committed some human rights violations, and there continued to be reports of Popular Mobilization Forces killing, torturing, kidnapping, and extorting civilians. ISIL committed the overwhelming majority of serious human rights abuses, including attacks against: civilians, (particularly Shia but also Sunnis who opposed ISIL); members of other religious and ethnic minorities; women; and children.

Observers also reported other significant human rights-related problems: harsh and life-threatening conditions in detention and prison facilities; arbitrary arrest and lengthy pretrial detention, denial of fair public trial; insufficient judicial institutional capacity; ineffective implementation of civil judicial procedures and remedies; arbitrary interference with privacy and homes; child soldiers; limits on freedom of expression, including press freedoms; violence against and harassment of journalists; undue censorship; social, religious, and political restrictions in academic and cultural matters; limits on freedoms of peaceful assembly and association; limits on religious freedom due to violence by extremist groups; restrictions on freedom of movement; refugee and internally displaced persons (IDP) abuse; both forced IDP returns and preventing IDPs from returning home; discrimination against and societal abuse of women and ethnic, religious, and racial minorities, including exclusion from decision-making roles; trafficking in persons; societal discrimination and violence against lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons; seizure of property without due process; and limitations on worker rights.

The United States' extraordinary commitment to Iraq is balanced against the inherent dangers of the ongoing conflict in Iraq to its citizens and residents and Iraq government problems developing and complying with the rule of law. A top national security goal of the United States is to establish relationships, cooperation, training, and support of the Iraq Government and military in the ongoing war against terrorism.

While most of the official U.S. commentary regarding Iraq focuses on human rights violations and terrorist activities, there is little, if any, evidence that Iraq is an active

participant in economic espionage, industrial espionage or trade secret theft, or violator of export-control regulations.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” (*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)) As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” (Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.)

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. 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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.” “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994))

The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005))

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials." (*Egan*, 484 U.S. at 531)

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." (See Exec. Or. 10865 § 7) Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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.

Analysis

Guideline B, Foreign Influence

The security concern under the Foreign Influence guideline is set out in AG ¶ 6:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

The guideline notes two conditions that could raise security concerns under AG ¶ 7:

(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 SOR focused on Applicant's parents, siblings, and in-laws, and their Iraqi citizenship and residence. Applicant is bound to his family and extended family in Iraq by mutual affection. In addition to the citizenship and residence issues, other facts of particular note in the Government's argument in the FORM are generally as follows: the frequency of contacts that Applicant has with his family and extended family; the presence of Islamist radical groups in Iraq; the increased levels of terrorism, violence, and insurgency in Iraq; significant human rights problems in Iraq; and the current U.S. Department of State travel advisory level stating: "Do not travel to Iraq due to terrorism and armed conflict." All of these facts concerning country conditions in Iraq demonstrate a potentially heightened risk of exploitation, coercion or duress are present due to Applicant's close ties to family members who reside in Iraq.

When an allegation under a disqualifying condition is established, "the Directive presumes there is a nexus or rational connection between proven conduct or circumstances . . . and an applicant's security eligibility. Direct or objective evidence of nexus is not required." (See Case No. 17-00507 at 2 (App. Bd. June 13, 2018) (citing ISCR Case No. 15-08385 at 4 (App. Bd. May 23, 2018))

There are safety issues for residents of Iraq primarily because of terrorists and anti-U.S. sectarian militias operating in Iraq. The mere possession of close family ties with relatives or in-laws living in Iraq is not, as a matter of law, disqualifying under the foreign influence guideline. However, if an applicant 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 sensitive information. (See ISCR Case No. 08-02864 at 4-5 (App. Bd. Dec. 29, 2009); ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 at 12 (App. Bd. Feb. 8, 2001)) These types of relationships could create a "heightened risk" of foreign inducement, manipulation, pressure, or coercion. Furthermore, as a matter of common sense and human experience, there is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members, and this presumption includes in-laws. (See ISCR Case No. 17-03450 at 3 (App. Bd. Feb. 28, 2019); ISCR Case No. 09-06831 at 3 (App. Bd. Mar. 8, 2011); ISCR Case No. 07-06030 at 3 (App. Bd. June 19, 2008); ISCR Case No. 05-00939 at 4 (App. Bd. Oct. 3, 2007) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)) Because of the SOR allegation associated with Applicant's in-laws, the in-law presumption concerning foreign influence is relevant here.

The DOHA Appeal Board has indicated for foreign influence cases, "the nature of the foreign government involved and the intelligence-gathering history of that government are among the important considerations that provide context for the other record evidence and must be brought to bear on the Judge's ultimate conclusions in the case. The country's human rights record is another important consideration." (See ISCR Case No. 16-02435 at 3 (May 15, 2018) (citing ISCR Case No. 15-00528 at 3 (App. Bd. Mar. 13, 2017)) Another important consideration is the nature of a nation's government's

relationship with the United States. These factors are relevant in assessing the likelihood that an applicant's family members living in that country are vulnerable to government coercion or inducement.

The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, the government ignores the rule of law including widely accepted civil liberties, a family member is associated with or dependent upon the government, the government is engaged in a counterinsurgency, terrorists cause a substantial amount of death or property damage, or the country is known to conduct intelligence collection operations against the United States. The relationship of Iraq with the United States, and the situation in Iraq places a significant burden of persuasion on Applicant to demonstrate that his relationship with any family member living in Iraq does not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist a relative living in Iraq.

Foreign influence security concerns are not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." (ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004)) Friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security, and we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. (See ISCR Case No. 02-22461, 2005 DOHA LEXIS 1570 at *11-*12 (App. Bd. Oct. 27, 2005) (citing ISCR Case No. 02-26976 at 5-6 (App. Bd. Oct. 22, 2004)).

While there is no evidence that intelligence operatives, criminals, or terrorists from Iraq seek or have sought classified or economic information from or through Applicant or his family, it would not be wise to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Iraq, like many countries, has a problem with terrorism. Applicant's family in Iraq "could be a means through which Applicant comes to the attention of those who seek U.S. information or technology and who would attempt to exert coercion upon him." (ISCR Case No. 14-02950 at 3 (App. Bd. May 14, 2015)) Nevertheless, as noted above, because of the citizenship and residence issues of his family members; and the other facts of particular note in the Government's argument, the issues of potential foreign pressure or attempted exploitation have been raised, and AG ¶¶ 7(a) and 7(b) apply. However, further inquiry is necessary to determine the degree of "heightened risk" as well as the application of any mitigating conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign influence under AG ¶ 8:

- (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, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., 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.

As noted above, since October 2001, when U.S. forces and coalition partners led military operations in Iraq, there has been first an interim government, essentially under U.S. control by the Chief Civilian Administrator and the IRDC, and then a democratic government in Iraq. Nevertheless, many daunting challenges remain largely because of Islamic terrorists and unfriendly forces continue to assert power and intimidation within the country. It is less likely that the Iraqi government would attempt coercive means to obtain sensitive information. The real concern in this instance is not the Iraqi government, but rather the Islamic terrorists and anti-U.S. sectarian militias.

Department Counsel argued that the presence of Islamist radical groups; the increased levels of terrorism, violence, and insurgency; and human rights problems in Iraq demonstrate that a heightened risk of exploitation, coercion or duress are present due to Applicant's close ties to his parents, siblings, and in-laws. Based on their various relationships, and the locations of Applicant's siblings and in-laws, there is obviously a potential, if not substantial, risk – a "heightened risk" – of foreign exploitation, inducement, manipulation, pressure, or coercion to disqualify Applicant from holding a security clearance.

However, that risk is not generated by the Iraqi government, but rather by Islamic terrorists striking out against the central Iraq authorities and all foreigners. Applicant's siblings and in-laws are not unlike members of the U.S. military stationed in Iraq, for they, too, are potential targets in this war on civilized humanity. The presence of Islamist radical groups and increased levels of terrorism, violence, and insurgency in Iraq have also been described for events occurring on September 11, 2001, and more recently in Fort Hood, Boston, Paris, Nice, Orlando, San Bernardino, and New York City.

There are U.S. military forces stationed in Iraq, and Applicant's continued presence there as a linguist assisting the U.S. forces, while faced with the high-risk dangers involved there, would be of significant assistance to those U.S. forces in fulfilling their mission. In ISCR Case No. 17-00629 (App. Bd. May 24, 2018) the Appeal Board discussed a translator's multiple tours on behalf of the United States in Iraq, limited time as a resident in the United States, and connections to family living in Iraq. The Appeal Board stated:

In general, an applicant's deployment to a combat zone in support of U.S. forces is not a factor that weighs against his or her national security eligibility. On the contrary, such deployments tend to establish various mitigating conditions such as [Directive] ¶ 8(b) ("there is no conflict of interest . . . because . . . the individual has such deep and longstanding loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest"); [Directive] ¶ 8(d) ("the foreign . . . activities are on U.S. Government business"); and [Directive] ¶ 8(f) ("the value or routine nature of the foreign business . . . is such that [it is] unlikely to result in a conflict of interest and could not be used effectively to influence, manipulate, or pressure the individual.")

Id. at 3 (internal footnotes omitted) (remanding administrative judge's denial of security clearance).

Such evidence clearly demonstrates that Applicant has repeatedly been willing to assume a high level of personal risk on behalf of the United States and shows his ties and sense of obligation to the United States could be sufficiently strong enough to support a favorable application of mitigating condition AG ¶ 8(b). (ISCR Case No. 17-00629 (App. Bd. May 24, 2018); ISCR Case No. 05-03846 at 6 (App. Bd. Nov 14, 2006) (An applicant's work in support of U.S. forces in Afghanistan occurred "in the context of dangerous high-risk circumstances in which [he] made a significant contribution to national security.") See *also* ISCR Case No. 04-12363 at 2 (App. Bd. Jul. 14, 2006); ISCR Case No. 07-00034 at 2-3 (App. Bd. Feb. 5, 2008); and ISCR Case No. 10-02803 at 6 (App. Bd. Mar. 19, 2012))

There is no evidence that Applicant's parents, siblings, and in-laws are or have ever been political activists, challenging the policies of the Iraqi government; that terrorists have approached or threatened them for any reason; that the Iraqi government or any terrorist organization have approached them; or that they currently engage in activities that would bring attention to themselves. As such, there is a reduced possibility that they would be targets for coercion or exploitation by the Iraqi government or the terrorists, which may seek to quiet those who speak out against them. Under these circumstances, the potential heightened risk created by their residence in Iraq is greatly diminished. Under the developed evidence, it is unlikely Applicant 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.

Applicant has substantial connections to the United States, having lived in the United States for nearly a decade. His wife is a naturalized U.S. citizen residing in the United States. He served shoulder-to-shoulder with U.S. Forces in Iraq as a linguist-translator from February 2005 until November 2011, during a period of increased hostilities and military action, and he contributed to the missions of the United States at personal risk on behalf of U.S. combat forces in Iraq.

Applicant has met his burden of showing there is little likelihood that relationships with his parents, siblings, and in-laws could create a risk for foreign influence or

exploitation. Furthermore, considering his professional activities as a linguist for U.S. Forces in Iraq, I am persuaded that Applicant's loyalty to the United States is steadfast and undivided, and that he has "such deep and longstanding relationships and loyalties in the U.S., that he can be expected to resolve any conflict of interest in favor of the U.S. interest." AG ¶¶ 8(a), 8(b), and 8(c) apply.

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 the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis. (*See U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); *See also* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

There is some evidence against mitigating Applicant's situation, because his parents, siblings, and in-laws are Iraqi citizen-residents, they are at risk from Islamic terrorists and anti-U.S. sectarian militias operating in Iraq. The Iraqi government does not fully comply with the rule of law or protect civil liberties in many instances. From about 1999 until about 2001, Applicant was forced to join the Arab Socialist Ba'ath Party in order to attend college after graduating from high school.

The mitigating evidence under the whole-person concept is more substantial. Applicant is a 37-year-old Iraqi-born, naturalized U.S. citizen, who emigrated from Iraq to the United States under the Special Immigrant Visa for Iraqi Translators Program. He is considered to be a part-time "prospective" employee of a defense contractor, since March 2018, and he will be serving as a linguist-translator, to be deployed to Iraq. He previously served in the same capacity during a period of increased hostilities and military action, and he contributed to the missions of the United States at personal risk on behalf of U.S. combat forces in Iraq. He received a bachelor's degree in Iraq in 2005. He has attended classes at a local college in the United States in an effort to obtain a GED diploma, but as of April 2018, no such diploma had been awarded to him. He has never served as a member of the Iraqi military. He has no financial interests outside of the United States.

His past membership in the Ba'ath Party does not present a CI or FP risk according to U.S. counterintelligence authorities.

Despite differences exacerbated by Iran, the United States and Iraqi governments are allies in the war on terrorism. Applicant has shown his patriotism, loyalty, and fidelity to the United States. His past honorable service as a linguist weighs heavily towards mitigating the foreign influence security concerns. These circumstances increase the probability that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group to coerce or exploit him. As he clearly stated, "I did this job before with the U.S. military, I don't fear anymore." (See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008))

Although there is a "heightened risk" of terrorist activities occurring in Iraq, such activities are also active in the United States, creating a "heightened risk" here as well. With his wife residing in the United States, there is a reduced "heightened risk" of foreign exploitation, inducement, manipulation, pressure, or coercion. Under the evidence presented, I have no questions about Applicant's ability to protect classified information. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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:	FOR APPLICANT
Subparagraphs 1.a. through 1.c.:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ROBERT ROBINSON GALES
Administrative Judge