



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



In the matter of:)
)
) ISCR Case No. 19-01583
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

04/22/2020

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the security concerns under Guideline B, foreign influence. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On June 14, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B. The DOD CAF acted 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 implemented on June 8, 2017 (AG).

With an undated letter, Applicant answered (Ans.) the SOR and requested a hearing before an administrative judge. On January 27, 2020, the case was assigned to me. On January 29, 2020, the Defense Office of Hearings and Appeals (DOHA) notified

Applicant that the hearing was scheduled for March 5, 2020. I convened the hearing as scheduled. Government exhibits (GE) 1 through 3 were admitted into evidence without objection. The Government's exhibit list and request for administrative notice were marked as hearing exhibits (HE) I and II. Applicant testified and offered exhibits (AE) A through C, which were admitted without objection. DOHA received the transcript (Tr.) on March 13, 2020.

Procedural Rulings

I took administrative notice of facts concerning Iraq. Department Counsel provided supporting documents that verify, detail, and provide context for the requested facts. The specific facts noticed are included in the Findings of Fact.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. Usually administrative notice in ISCR proceedings is accorded to facts that are either well known or from U.S. Government reports. (See 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) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986); Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice)

Findings of Fact

In Applicant's answer to the SOR, he admitted all of the allegations with explanations. His admissions are incorporated into the findings of fact. After a thorough and careful review of the evidence, I make the following additional findings of fact.

Applicant is 32 years old. He was born in Iraq in 1987. He immigrated to the United States in 2009, using a special immigrant visa earned as a result of his work as a linguist for U.S. forces in Iraq from 2006-2009. He became a U.S. citizen in 2015. He earned an associate's degree. He is single and has no children. Applicant is seeking a linguist position, which requires a security clearance. (Tr. 6, 20-21, 24; GE 1)

The SOR alleged that Applicant's father, mother, three brothers, two sisters, and his stepmother are residents and citizens of Iraq. It also alleged that his cousin, who is a Kurdish soldier, and his brother-in-law, who is a police officer for the Ministry of Interior, are also residents and citizens of Iraq. Additionally, the SOR alleged that Applicant provided financial support to various family members, friends, and contacts in Iraq.

In 2006, after Applicant graduated from high school in Iraq, he was hired as a linguist to work with U.S. forces. Performing his linguist duties placed him in harm's way on numerous occasions. Three U.S. Army officers he served with provided letters of recommendations, which described Applicant's duties performed and his character traits. (Tr. 20, 38; AE A-C) A former Army officer described Applicant as having "unquestionable integrity and sheer dedication." He went on to state:

I have prioritized maintaining contact with [Applicant] over the years, because his character and integrity are simply beyond reproach. My trust and faith in [Applicant's] patriotism has only strengthened over the years. I cannot imagine he has not faced hardship and struggle, leaving his family and coming to the United States. But every time we talk, [Applicant] has always expressed incredible gratitude to be in this country and an unwavering pride to be an American. The fact that he is seeking this secret clearance so that he can continue to serve this country in a critically important role as a translator underscores [Applicant's] patriotism and dedication to our country (AE A)

Another Army officer who served with Applicant stated the following:

[Applicant] is dependable, hardworking, and punctual. He is able to form relationships with locals that facilitate our later engagements. [Applicant] has proved to be loyal, trustworthy, and has become a good friend.

I commend [Applicant's] performance and recommend [Applicant] without reservation for employment or citizenship. He has fought and suffered with my soldiers and done more than many Americans who decided to sit this war out. The courage he has shown and dedication to improving the lives of Iraqis is commendable and should be rewarded. (AE B)

The third Army officer supporting Applicant noted that Applicant's actions in Iraq contributed to the safety of his soldiers and Iraqi citizens. (AE C)

The current status of Applicant's relatives listed in the SOR is as follows:

1. Applicant's father and stepmother (SOR ¶¶ 1.a, 1.e). Applicant has no ongoing relationship with his father and stepmother who are citizens and reside in Iraq. He has never met or spoken to his stepmother and his last contact with his father was in 2007. His estrangement is due to his father abandoning their family years ago. (Tr. 25)

2. Applicant's mother (SOR ¶ 1.b). Applicant's mother is a resident and citizen of Iraq. She is 68 years old. She resides in a refugee camp in the Kurdish area of Iraq. She does not work outside the home and has no affiliation with the Iraqi government. Applicant maintains weekly telephone contact with his mother. He has provided financial assistance to his mother at various times in order to overcome the loss of all family possessions when she fled from hostile occupiers and entered a refugee camp. Most recently, he sent her \$800 two months ago. He estimated that over the years he may have provided approximately \$30,000 to various family members in Iraq. (Tr. 21, 26, 32-34, 39-40; GE 3)

3. Applicant's three brothers (B1, B2, B3) (SOR ¶ 1.c). All Applicant's brothers remain citizens of Iraq, but B1 and B2 currently reside in France. Both recently moved to France and are seeking employment there. They do not intend to return to Iraq.

Applicant has weekly telephone contact with B1 and B2. B3 has resided in Germany for approximately four months. He does not intend to return to Iraq. Applicant has weekly telephone contact with B3. He has provided financial assistance to his brothers at various times in order to overcome the loss of all family possessions when they fled from hostile occupiers and entered a refugee camp. (Tr. 21, 26-29, 32-34, 40; GE 3)

4. Applicant's two sisters and a brother-in-law (S1, S2, BL (SOR ¶¶ 1.d, 1.f). S1 and BL (S1's husband) are residents and citizens of Iraq. S1 does not work outside the home and BL is a police officer for the Ministry of the Interior. Applicant has weekly telephone contact with S1 and monthly contact with BL. S2 remains a citizen of Iraq, but she currently resides in France where she attends school. She does not intend to return to Iraq. Applicant has had weekly contact with S2 in the past. She has no affiliation with the Iraqi government. (Tr. 21, 26, 30-34, 41; GE 3)

5. Applicant's cousin (SOR ¶ 1.f). Applicant's cousin is a resident and citizen of Iraq. He is currently a member of the Kurdish military. Applicant has contact with this cousin approximately two times a year. (Tr. 32, 41-42; GE 2)

Applicant maintains checking and savings accounts in a U.S. bank. Currently between both accounts, he has approximately \$10,000. He has no property or other assets in Iraq and he does not stand to inherit any property. He returned to Iraq in 2015 for approximately 40 days to visit his family. He would protect the interests of the United States over concerns about his Iraqi family's safety. He intends to reside in the United States in the future and has no desire or intent to reside in Iraq. (Tr. 34-37)

Administrative Notice.

The U.S. State Department warns U.S. citizens against travel to Iraq as travel within the country remains dangerous. The U.S. Embassy warns that U.S. citizens are at high risk for kidnapping and violence and to avoid all but essential travel to Iraq. In May 2019, the U.S. government considered the potential threat to U.S. government personnel in Iraq to be serious enough to order the departure of non-emergency employees from the embassy and consulate. The Islamic State of Iraq and Syria (ISIS) remained the greatest terrorist threat globally, maintaining a formidable force in Iraq and Syria. Human rights abuses in Iraq include unlawful killings and other serious crimes by Iraqi security forces. (HE II)

Policies

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 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, 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. According to AG ¶ 2(a), the entire process is a careful weighing 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion to obtain a favorable security 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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

AG ¶ 6 explains the security concern about "foreign contacts and interests" as follows:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern

if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

AG ¶ 7 indicates conditions that could raise a security concern and may be disqualifying 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 nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant's family members 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, a family member or friend is associated with or dependent upon the government, the country is known to conduct intelligence collection operations against the United States, or the foreign country is associated with a risk of terrorism. The relationship between Iraq and the United States places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationships with his relatives living in Iraq do not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his relatives living in Iraq who might be coerced by governmental entities or terrorist organizations, or pressured to assist Iraq.

Guideline B is 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)) Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields.

While there is no evidence that intelligence operatives from Iraq seek or have sought classified or economic information from or through Applicant or his relatives living in Iraq, it is not possible to rule out such a possibility in the future. AG ¶¶ 7(a) and 7(b) apply based upon Applicant's family members who are residents and citizens of Iraq.

AG ¶ 8 lists conditions that could mitigate foreign influence security concerns, including:

(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 U.S.; and

(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.

Applicant credibly testified that he has weekly contact with his mother, but minimal contact with S2, BL, and his cousin who remain in Iraq. He presented sufficient evidence to establish that it is unlikely that he would be placed in a position to choose between the interests of his relatives living in Iraq and those of the United States. He already has demonstrated that he would put the United States' interests first when he worked as a linguist for U.S. forces. AG ¶ 8(a) applies.

Applicant has met his burden to establish his "deep and longstanding relationships and loyalties in the U.S." He became a U.S. citizen in 2015. He currently works and lives in the United States. He worked as a linguist in Iraq from 2006 to 2009. He performed missions for U.S. forces where he earned praise for his service while in harm's way. He performed his linguistic duties for U.S. military officers who recommend him. The evidence supports that Applicant has longstanding ties to the United States and would resolve any conflict of interest in favor of the United States. AG ¶ 8(b) applies.

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(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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The circumstances tending to support granting Applicant's clearance are more significant than the factors weighing towards denying his clearance. I considered the comments by Applicant's U.S. military supervisors, who attested to his dedication and commitment to U.S. forces. I also considered his ties to this country. He has demonstrated his longstanding loyalty to the United States. Therefore, he provided sufficient evidence to mitigate the security concerns.

Overall the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that the security concerns arising under Guideline B, foreign influence, were mitigated.

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: - 1.h: 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 E. Coacher
Administrative Judge