



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



In the matter of: )  
)  
) ISCR Case No. 19-01782  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Mary M. Foreman, Esq., Department Counsel  
For Applicant: *Pro se*

02/20/2020

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline B, foreign influence. Eligibility for access to classified information is granted.

**Statement of the Case**

On June 24, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence. The action was taken 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on July 29, 2019, and requested a hearing before an administrative judge. The case was assigned to me on October 7, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 25,

2019. I convened the hearing as scheduled on January 17, 2020. The Government offered exhibits (GE) 1 through 3. Applicant testified and did not offer any exhibits. There were no objections and the Government's exhibits were admitted into evidence. Post-hearing, Applicant provided Applicant Exhibit (AE) A, which was admitted into evidence without objection (Hearing Exhibit III). DOHA received the hearing transcript on January 28, 2020.

### **Request for Administrative Notice**

Department Counsel submitted Hearing Exhibits I and II, which were written requests that I take administrative notice of certain facts about Iraq and Jordan. Without objection, I have taken administrative notice of the facts contained in the request. The facts are summarized in the written request and will not be repeated verbatim in this decision. Of particular note is the significant threat of terrorism and ongoing human rights problems in Iraq and Jordan.

### **Procedural Matters**

The Government moved to amend SOR ¶ 1.b. There was no objection and it was amended as follows:

Your mother-in-law and extended family are citizens of Iraq and residents of Jordan. (Tr. 9-11)

### **Findings of Fact**

Applicant admitted the allegation in the SOR ¶ 1.a, and he both admitted and denied parts of the allegations in SOR ¶¶ 1.b and 1.c. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 39 years old. He was born in Iraq where he attended high school. He attended the Iraqi Military College and earned a bachelor's degree in military science. He then attended the Iraqi Police College and earned a bachelor's degree in criminal justice. His attendance at the Military College was considered military service, and he graduated with a military rank. He was subject to recall to military service, if needed. When he graduated from the Police College in 2003, he began working for the Iraqi government police force. He married in 2008 and has no children. (Tr. 20-22; GE 1, 2)

In 2003, Applicant was part of the Iraqi security forces. After the invasion of Iraq by Coalition Forces, the Iraqi security forces were sent home. Because there was no official Iraqi government at the time (for about six months), Applicant was paid an emergency salary by the United States to provide police protection for the Iraqi people. He continued to work with the U.S. security forces and provided bodyguard protection for a U.S. General in 2004 and 2005. (Tr. 73-85)

In 2006, while supporting the Coalition Forces, Applicant was kidnapped by a militia group because of his efforts to rid areas of terrorist groups within Iraq. Applicant was blindfolded, handcuffed, beaten, and put in the trunk of a vehicle where he was transported to a different location. He was accused by his captors of working with the Coalition Forces. At one point, he was left alone in a room and used his military training to remove the handcuffs, but injured his wrists while doing so. He escaped from the room where he was held captive and knew if he was found he would be killed. Applicant was afraid for his safety. He found a driver who took him to a village and the sheik there provided him protection, medical care, and transportation to his sister's resident. Because he was being accused of working with the Coalition Forces, he knew his family was in danger. He warned his family and asked them to bring him his passport, which they did. His father gave him money so he could escape the country. Applicant did not trust the Iraqi government to protect him. Applicant fled Iraq through Syria to Jordan. (Tr. 22-36)

In 2005, Applicant's wife's brother was working for the United Nations in Iraq. He was kidnapped and is presumed dead. Her family has never heard from him again. That same year, Applicant and his wife were taking her mother to hospital in Iraq when the vehicle they were driving was attacked. His wife was hit in the head with shrapnel and survived the attack as did her mother. After this incident, his wife, her mother, two brothers, and two sisters fled Iraq to Jordan. His wife's family remain citizens of Iraq and are residents of Jordan. Her father is deceased. Her mother is a homemaker. Her brothers are engineers. One works in private industry and the other works in a government position that verifies people's educational credentials. One sister is a teacher and the other works in the accounting field. (Tr. 41-45, 57-62; GE 1, 2, 3)

After fleeing Iraq, Applicant stayed in Jordan as a refugee from 2006 to 2008. He then applied to immigrate to the United States. He and his wife married in August 2008 and immigrated in December 2008. They both became naturalized citizens of the United States in 2014. Applicant legally changed his name in 2014, because he wanted to follow the American culture and have his name reflect a common American name, and so he could start a new life. He also changed it for security reasons. He is aware that there are still militias in Iraq who cultivate hate. (Tr. 36-41, 45, 62, 66-68)

Applicant and his wife have regular contact with her family in Jordan. They visited them two or three times in Jordan since they immigrated to the United States. Their most recent visit was in 2017. (Tr. 41-45, 57-62; GE 1, 2, 3)

In Applicant's May 2017 security clearance application, he stated that he has renounced his Iraqi citizenship since becoming a U.S. citizen. His Iraqi passport has expired and he does not intend to ever renew it. GE 1

Applicant's wife was a dentist in Iraq. She worked as a dental assistant in the United States from 2009 to 2015. She was diagnosed with cancer in 2015, and did not work. She recently took the national dental boards to be certified and licensed as a dentist in the United States. (Tr.41-42, 48-49)

Applicant's mother, four brothers, and three sisters are citizens and residents of Iraq. Two brothers are married, and his three sisters are married. All are citizens of Iraq. Applicant's father is deceased. Two of his sisters are teachers and the other works in a bank. Three of his brothers are jewelers and one is a student. His mother is a homemaker. Applicant has no current information about his family in Iraq beyond 2015. (Tr. 55; GE 1, 2, 3)

In 2012, Applicant applied for refugee status for two of his brothers to immigrate to the United States. In 2014, he applied for the rest of his family to immigrate. Their applications are still pending. One of his brothers died of cancer, and in 2015 the other came to U.S. He stayed for about a month and was homesick. His father was sick and his parents wanted his brother to return to Iraq. Applicant warned his family that if his brother returned to Iraq he would not be permitted to return to the United States. Applicant was concerned about his brother's future in Iraq. He told his family that if his brother returned to Iraq, Applicant would cut ties with the family. His brother returned to Iraq in 2015, and Applicant has not had any contact with any family members since then. Applicant testified that he will not visit his family in Iraq. If they chose to visit him in Jordan or Kuwait, he would agree. Applicant's wife also does not have contact with his family in Iraq. (Tr. 49-54, 70-73; GE 2, 3,)

Applicant stated that he does not hate his family in Iraq. If they were to immigrate to the United States, he would welcome a relationship with them. However, his concerns are with Iraq, and if his family lives there, he will not have contact with them. He does not trust the Iraqi government and many of its people. (Tr. 53-54, 70-73)

Applicant's father was a jeweler and had a small factory in Iraq. He also had a house and some land. His father told him the property was worth about \$50 million. Applicant believes his father was confused about the value of the property and its conversion to U.S. dollars. Applicant contacted a real estate agent in Jordan to determine the actual value of the property, if it were sold. He provided a document from the real estate agent with the estimated value of the property as \$950,000. According to Islamic law, one-eighth of the amount would go to his mother. The remaining amount would go to the children, with the males receiving twice as much as the females. (Answer to the SOR) Applicant has no information about whether or not the property has been sold because he has no contact with his family. If the property was sold, he would likely inherit a share, but noted he had a big family so it would be divided accordingly. (Tr. 62-66)

Applicant stated that in 2003, as part of the Iraqi military, he was working against the United States, but he never fought against U.S. forces. After the invasion, he worked with U.S. security forces. (Tr. 73-85)

Applicant worked as a role player employed by U.S. defense contractors from April 2009 to April 2010. He has employment as a linguist with a defense contractor pending the disposition of his security clearance. The terms of his employment are that he will not be sent to Iraq. However, Applicant said he would acquiesce and go to Iraq if the United States Government ordered him to do so. As a former military officer, he would follow

orders. Applicant was also a self-employed limousine and truck driver for a time. He and his wife intend to remain in the United States. They do not own property in the U.S. They have no assets in Iraq or Jordan. All of their assets are in the United States. Because he was kidnapped and almost killed in Iraq, he continues to be concerned for his safety in Iraq and has no intention of returning. (Tr. 45-48, 52-53, 85-88; GE 1, 2, 3)

Applicant provided a character letter from a former senior deputy minister in Iraq now living in the United States. He worked with Applicant from 2003 to 2004. He noted that Applicant was working as a police officer and was involved in important missions. Applicant worked with the senior deputy minister's team, who were in charge of protecting him and other high profile visitors from the Coalition Provision Authorities in Iraq. He described Applicant as a dedicated professional with high ethical standards. Applicant was trusted during a time when Iraq was going through a difficult period. Applicant willingly performed his duties under difficult circumstances. (AE A)

### **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. 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(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." 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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 as to obtaining 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 as to 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 expresses the security concern regarding foreign influence:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they resulted 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 it associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and the following are potentially applicable:

(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;

(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; 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.

There is a significant threat of terrorism and ongoing human rights problems in Iraq and Jordan. Applicant's foreign contacts create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, both directly and through his wife. The disqualifying conditions in AG ¶¶ 7(a), 7(b) and 7(e) have been raised by the evidence. Applicant does not have any financial interests in Iraq. His speculative inheritance of property in Iraq, if sold, does not amount to a substantial financial interest that could subject him to exploitation or a personal conflict of interest. AG ¶ 7(f) does not apply.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(a) the nature of the relationship 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 and interests of the U.S.;

(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 interests in favor of the U.S. interests; 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.

I considered the totality of Applicant's ties to Iraq and Jordan. 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. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Applicant's mother, three brothers, and three sisters are citizens and residents of Iraq. He has not had contact with any of them since approximately 2015. He does not intend to visit them or have contact with them as long as they remain in Iraq. He does not know anything about their lives since he terminated contact with them. AG ¶ 8(c) applies to his family in Iraq.

Applicant and his wife maintain contact with her family in Jordan. His wife frequently talks with them and they have visited her family in Jordan. AG ¶ 8(c) does not apply to them.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with relatives, who are citizens and resident of Iraq and Jordan. Applicant has had no contact with his family in Iraq. He cut ties with them because they remain in Iraq. He would only renew contact with them if they were not living in Iraq. Due to his kidnapping and torture while in Iraq, he intends never to return, unless ordered to do so. Applicant and his wife moved to the United States in 2008 and became U.S. citizens in 2014. His wife has recently taken the national boards to practice dentistry. They are committed to remaining in the United States. Applicant's wife's family in Jordan primarily works in the private sector, except for one brother, and there is no indication that they have close ties to the government. The brother works in an administrative position in a government office. Applicant is fiercely aware of the dangers in Iraq, hence his intention never to return. The fact he has not had any contact with his family minimizes the possibility that they could be used to manipulate or coerce him. He does not trust the Iraqi government and many of its people. There is sufficient evidence to find that it is unlikely Applicant would be placed in a position of having to choose between the interests of his family or his wife's family and the interests of the United States. AG ¶ 8(a) applies.

Applicant served as a police officer prior to the United States' presence in Iraq. After the fall of the Iraqi Government, he served with the Coalition forces providing protection for a deputy minister and high visibility visitors. Because of his support and work with the Coalition Forces, he was kidnapped and tortured, eventually fleeing Iraq. Applicant has no loyalty toward Iraq. He changed his name to embrace the culture of the United States and for his security. Applicant has demonstrated his loyalty to the United States through his past work as a role player for a defense contractor. Although Applicant's wife has family in Jordan, the evidence supports that Applicant's loyalty is to the United States, and he can be expected to resolve any conflict of interest in favor of the U.S. interest. 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. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant supported Coalition Forces in Iraq. As a consequence of that work, he was kidnapped, tortured, and fled Iraq. He immigrated to the United States in 2008, and he and his wife became citizens in 2014. Applicant has embraced the American culture and changed his name. He does not have contact with any family members in Iraq, which minimizes potential security risks. He has contact with his wife's family in Jordan. Except for one brother, who has an administrative position with the Jordanian government, there is no indication that any of his in-laws are in positions that may make it likely Applicant would have to choose between his wife's family and the interests of the United States. The complicated state of affairs in Iraq and Jordan places a significant burden of persuasion on Applicant to demonstrate that his foreign family members and his wife's do not pose an unacceptable security risk. Applicant's ties and loyalty are to the United States where he and his wife live. He has met that burden. Applicant mitigated the foreign influence security concerns.

### **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.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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Carol G. Ricciardello  
Administrative Judge