



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-01883
)
Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*
09/30/2020

Decision

RIVERA, Juan J., Administrative Judge:

Applicant, a naturalized U.S. citizen, has two siblings in Iraq that could make him vulnerable to pressure or coercion. Notwithstanding, his wife, mother, and five other siblings are permanent U.S. residents. On balance, because of his relationships and loyalty to the United States, he can be expected to resolve any conflict of interest in favor of the U.S. interest. Foreign influence security concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on April 20, 2017, seeking clearance eligibility for a position as a linguist with a federal contractor. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued a Statement of Reasons (SOR) on September 4, 2019, alleging security concerns under Guideline B (foreign influence). Applicant answered the SOR on November 9, 2019, and requested a hearing before an administrative judge.

The case was assigned to me on February 6, 2020. On February 18, 2020, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for April 1, 2020. In mid-March 2020, the hearing was cancelled because of

DOD workplace and travel restrictions based on health concerns posed by the COVID-19 virus.

On July 20, 2020, DOHA notified Applicant that the hearing was rescheduled for August 5, 2020. I convened the hearing as rescheduled. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. GE 4 (Request for Administrative Notice concerning the Federal Republic of Iraq (Iraq)) and GE 5 (Discovery Letter) were marked and made part of the record. Applicant submitted exhibits (AE) 1 and 2, which were admitted without objections. DOHA received the transcript (Tr.) on August 17, 2020.

Procedural Issue

Department Counsel requested that I take administrative notice of facts concerning the Federal Republic of Iraq, its internal and external affairs, and its relations with the United States, to determine whether foreign influence security concerns are raised by Applicant's connections to Iraq. (GE 4) Applicant did not object to me taking administrative notice of those facts, and I granted Department Counsel's motion.

In Guideline B cases, I am required to consider, among other things, the nature of a nation's government, its relationship with the United States, and its human rights record to assess the likelihood that an applicant or his family members are vulnerable to pressure or coercion. The facts administratively noticed are set out in the source documents included in GE 4 and will not be repeated here. I note; however, that the U.S. Department of State travel advisory for Iraq is: "Do not travel to Iraq due to terrorism and armed conflict." Numerous terrorist and insurgent groups, criminals, and militias are active in Iraq and regularly attack Iraqi citizens and threaten U.S. personnel and interests in Iraq. Human rights abuses continue without punishment for those involved.

At hearing, Department Counsel moved to amend SOR ¶ 1.b to conform it to the evidence presented by deleting the word "Austria," and replacing it with the word "Iraq." Without objections, the motion was granted as requested. (Tr. 22 -23)

Findings of Fact

Applicant admitted the allegation in SOR ¶ 1.a (that his sister is a citizen-resident of Iraq). He denied the allegation in SOR ¶ 1.b (that his brother is a citizen of Iraq residing in Austria), because his brother is currently residing in Iraq. Applicant's SOR admissions and those at his hearing are incorporated herein as findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant, his parents, five brothers, and two sisters were born and raised in Iraq. His father died in 1990. (Tr. 37) His mother is a U.S. permanent resident living in the United States. She owns the family home in Iraq, a two bedroom house, with an estimated value between \$200,000 and \$400,000. Applicant testified that no one is

currently residing in that property. He does not know who would inherit it at his mother's death. (Tr. 41 -42)

Applicant, 36, was educated in Iraq and received a bachelor's degree in January 2007. He testified that while in high school and college, he sometimes volunteered as a translator for U.S. personnel. Applicant was issued an Iraqi passport in January 2007, and he used it to travel to Syria that same year. He also used his Iraqi passport to travel from the United States to Canada in June 2012. His Iraqi passport expired in July 2015.

Between July 2007 and January 2009, Applicant worked as an interpreter for a federal contractor providing services to U.S. personnel in Iraq. He knew the job had risks associated with it, but the pay was good and he had no other employment opportunities. He believed that taking the job was his commitment to helping the Iraqi people and the United States. Applicant received three recommendations from U.S. personnel that supervised him when he worked as an interpreter in Iraq. (AE 1 and 2)

In 2009, Applicant received a threat from the Al Mahdi Army because of his work for the United States. The threatening letter included bullets and a note indicating that they knew he was working for the United States and they would get him. Applicant provided the letter to U.S. authorities investigating the threat. (Tr. 54 – 55) After the threat, he moved from his mother's home to one of his brother's residence. Applicant was granted refugee status and immigrated to the United States on September 9, 2010. He was granted permanent residency a year later, and became a naturalized U.S. citizen in June 2016.

Between November 2010 and April 2011, Applicant worked selling pizza. He then worked for a company from April 2011 to May 2016. In April 2016, Applicant paid \$247,000 in cash for a home (currently in his name). He explained that he saved most of the money from his earnings and that all of his siblings contributed money to buy the property. Although it is in his name, Applicant considers the property as his mother's property – as the family's home. His mother and five siblings live in the home.

Applicant was unemployed between May 2016 and August 2017, and supported himself with his state's unemployment benefits. A federal contractor offered him a position as a linguist in Iraq in March 2017. The offer is contingent on Applicant's eligibility for a security clearance. He submitted his first security clearance application on April 20, 2017. While waiting for his clearance, Applicant was hired in August 2017, as a technical specialist by his current employer, a large U.S. software-hardware manufacturing company. (Tr. 57 – 58)

Applicant married his wife in March 2020, and they are expecting a baby. She is a 30-year-old, Iraqi-born, permanent U.S. resident. Her father was a major in the Iraqi Army. He was threatened by an Iraqi militia, and her family fled to Egypt. She and her brother were granted refugee status and entered the United States in 2012. She became a U.S. permanent resident in 2013, and applied for her naturalization in May 2020. Applicant anticipates her naturalization in the near future. (Tr. 57 - 60) Her

mother, father, and sister are still in Egypt seeking refugee status or to immigrate to the United States. (Tr. 59 – 60)

Applicant owns a car and is renting an apartment for himself and his wife. He indicated that he currently has no savings, but has about \$4,000 in a retirement account. He is pursuing a master's degree in cyber security at a U.S. university.

Applicant has four brothers (ages 32, 49, 54, and 57) and one sister (age 56), that are permanent U.S. residents living with his mother in the family home in the United States. One of Applicant's brothers, age 56, is currently a citizen-resident of Iraq. (SOR ¶ 1.b) Applicant went to live with this brother after he was threatened in 2009 for working as a U.S. interpreter. Apparently, his brother was afraid for his life and also fled to Austria seeking refugee status. Austria denied his request for asylum, and his brother returned to Iraq where he currently resides with his wife and three children. He is a taxi driver. Applicant testified that in 2012, he also applied for refugee status for his brother and sister in Iraq, but it was not granted. Applicant traveled to Austria in 2016 and stayed with his brother for about one week. Applicant communicates with his brother once or twice a month via social media.

One of Applicant's sisters, age 51, is a citizen-resident of Iraq. (SOR ¶ 1.a) During his counterintelligence focused security screening interview (interview), Applicant stated that his family disowned his sister because she married his cousin and the family did not approve. (GE 2) However, in October 2015, his sister sent Applicant \$10,000 from Iraq to help support the family in the United States. (GE 3; Tr. 44 - 45) Currently, Applicant and this sister have telephonic contact every two weeks. However, his other siblings and mother have daily contact with his sister in Iraq. (Tr. 33 – 34) According to Applicant, his sister's husband is retired. He used to work for the Iraqi government in a shoe factory.

During his June 2017 interview (GE 2), Applicant stated that he was a citizen of two countries, Iraq and the United States. When questioned further, he stated he considers the U.S. his country and that he would never betray the United States. He expressed that it was his dream as a child to come to the United States. He believes he earned his right to be a U.S. citizen when he risked his life working for the United States, and that he and his family endured hardships to come to the United States. When questioned about renouncing his Iraqi citizenship, Applicant replied "the U.S. allows me to have both." He later qualified that he would renounce his Iraqi citizenship if required for his position. Applicant believes that he is not subject to any foreign influence because his family lives in the United States.

Applicant testified that he has friends that are officers in the Iraqi Army – one is a major and the other a lieutenant. (Tr. 38 – 39) They became friends while he was in college. He communicates with them infrequently via internet and social media.

Concerning Iraq, I took administrative notice that the U.S. Department of State warns that travel within Iraq remains very dangerous and the ability of the U.S.

Embassy to assist U.S. citizens is extremely limited. U.S. citizens in Iraq are at high risk for kidnapping and terrorist violence. Numerous terrorist and insurgent groups are active in Iraq, including ISIS. Such groups regularly attack Iraqi security forces and civilians. Anti-U.S. sectarian militias and criminal elements may also threaten U.S. citizens and western companies throughout Iraq.

Severe human rights problems are widespread in Iraq. Sectarian hostility, widespread corruption, and lack of transparency at all levels of government and society weakened the government's authority and worsened effective human rights protections. Problems include harsh and life-threatening conditions in detention and prison facilities; arbitrary arrests and lengthy pretrial detention; limits on freedom of expression to include press, social, religious and political restrictions in academic and cultural matters; discrimination against and societal abuse of women and ethnic, religious, and racial minorities; seizure of property without due process and limitations of worker rights.

Policies

The SOR was issued under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; and DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended. The case will be adjudicated under the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), applicable to all adjudicative decisions issued on or after June 8, 2017.

Eligibility for access to classified information may be granted "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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in SEAD 4, App. A ¶¶ 2(d) and 2(f). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does,

the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter 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 those who must protect national interest as their 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. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline B, Foreign Influence

The security concern for foreign influence is set out in AG ¶ 6:

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

Applicant’s two siblings are citizen-residents of Iraq. He maintains a close relationship with his relatives in Iraq as demonstrated by his and his family’s frequent contacts and communications with them. His brother currently residing in Iraq fled to another country because he was afraid for his life after Applicant was identified as a U.S. interpreter. Additionally, Applicant’s family has a property in Iraq with a value between \$200,000 and \$400,000.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in this case:

- (a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or

resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; and

(f) substantial business, financial, or property interests in a foreign country . . . that could subject the individual to possible future exploitation, inducement, manipulation, pressure, or coercion.

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.

There is substantial evidence of a significant threat of terror, sectarian violence, criminal activity, and ongoing human rights problems in Iraq. Applicant's foreign contacts may create a potential conflict of interest, and there is evidence of a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. The evidence of Applicant's connections to his siblings, their connections to Iraq, and the property in Iraq are sufficient to establish disqualifying conditions AG ¶¶ 7(a), 7(b), and 7(f).

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

(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

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

I considered the totality of Applicant's family ties to Iraq as well as each individual family tie. 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.

The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. 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.

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.

Travel within Iraq remains very dangerous and the ability of the Iraqi government or the U.S. Embassy to assist U.S. citizens is extremely limited. U.S. citizens in Iraq are at high risk for kidnapping and terrorist violence. Numerous terrorist and insurgent groups are active in Iraq. Such groups regularly attack Iraqi security forces and civilians. Anti-U.S. sectarian militias and criminal elements may also threaten U.S. citizens and western companies throughout Iraq. Severe human rights problems are widespread in Iraq. Sectarian hostility, widespread corruption, and lack of transparency at all levels of government and society weakened the government's authority and worsened effective human rights protections.

Because of his relatives and property interests in Iraq, Applicant could be placed in a position of having to choose between the interests of a family member, his property interests in Iraq, and the interests of the United States. However, there is no evidence of any actions taken by any Iraqi person, group, organization, or government interest against his siblings living in Iraq since Applicant or his sibling in the United States left Iraq.

Applicant immigrated in 2009, and most of his immediate family members immigrated to the United States in 2012. He became a naturalized U.S. citizen in 2016,

and his mother and siblings are currently permanent U.S. residents. His mother and siblings live in a home all of them purchased together. Applicant's two siblings in Iraq applied for refugee status and their application is pending. I note that Applicant received favorable recommendations from U.S. personnel that supervised him when he worked as an interpreter in Iraq.

Applicant recently married and his wife is expecting their first child. While waiting for a linguist position with a federal contractor, Applicant has been working full-time for a U.S. company, and he seeking a master's degree in a U.S. university. He offered to resign his Iraqi citizenship, if necessary to obtain his linguist position.

I considered that Applicant's mother (or Applicant's family) have a property in Iraq worth between \$200,000 and \$400,000. Applicant's and his siblings' interests in that property would not accrue until his mother's passing. Thus, at this point, his interest in the property is speculative and likely he would be entitled to only a percentage of the value of the property. According to his testimony, the property is vacant and it is overseen by his brother in Iraq. Considering that most of the Applicant's immediate family members are currently living in the "family home" in the United States. (except for two siblings in Iraq), I believe that Applicant's interest in the Iraqi property is unlikely to result in a conflict of interest and could not be used effectively to influence, manipulate, or pressure him.

On balance, I find that Applicant submitted sufficient evidence of his ties to the United States. There is no conflict of interest because Applicant has established longstanding relationships and loyalties in the United States. He can be expected to resolve any possible conflict of interest in favor of the U.S. interest. His most important family interests all reside in the United States. AG ¶¶ 8(a), 8(b), and 8(f) are mitigated.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the guidelines, each of which is to be evaluated in the context of the whole person. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

I have incorporated my comments under the guideline at issue in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under these guidelines, and evaluating all the evidence in the context of the whole person, Applicant has mitigated the 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:

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|----------------------------|---------------|
| Paragraph 1, Guideline B: | For APPLICANT |
| Subparagraphs 1.a and 1.b: | For Applicant |

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national security interest of the United States to grant Applicant's eligibility for a security clearance. Clearance is granted.

JUAN J. RIVERA
Administrative Judge