



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



In the matter of:)
)
) ISCR Case No. 19-02600
)
Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*
06/16/2020

Decision

RIVERA, Juan J., Administrative Judge:

Applicant has strong family connections in Iraq that make him vulnerable to pressure or coercion. He used an Iraqi identification card to obtain a job in Iraq. He is in extended leave from that job, and has the ability to return to that job at any time. Foreign influence and foreign preference security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 13, 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 December 13, 2019, alleging security concerns under Guideline B (foreign influence) and Guideline C (foreign preference). Applicant answered the SOR on December 27, 2019, and requested a decision based on the written record in lieu of a hearing.

A copy of the Government’s file of relevant material (FORM), containing the evidence supporting the security concerns, was provided to Applicant by letter dated February 28, 2020. Applicant received the FORM on March 5, 2020. He was granted a period of 30 days after receipt of the FORM to submit any objections to the FORM and

to provide material to refute, extenuate, or mitigate the concerns. Applicant did not respond to the FORM. The case was assigned to me on May 12, 2020. Applicant raised no objections to the Government's proffered evidence. I admitted and considered the Government's proposed evidence.

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. (FORM) 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 the FORM 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.

Findings of Fact

Applicant admitted all of the SOR allegations. Under Guideline B, the SOR alleged that: his mother, two brothers, and four sisters are citizens and residents of Iraq (SOR ¶¶ 1.a-c); and that one brother works for the Iraqi government in an important position of trust (SOR ¶ 1.d). Under Guideline C, the SOR alleged that Applicant applied for employment with the city of Baghdad in 2016, worked there for about six months and went on extended leave in July 2017. He has the ability to return to work at any time (SOR ¶ 2.a). Applicant anticipates receiving a pension from the government of Iraq starting at age 50 (SOR ¶ 2.b).

Applicant's SOR admissions 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 and siblings were born and raised in Iraq. He is 50 years old. He claimed that in the 1990s, he and a brother protested against the government of Saddam Hussein. In 1995, they both left Iraq for Lebanon, afraid for their lives, and received refugee status. He resided in Lebanon until he entered the United States in 2000. Applicant married his wife, a U.S. citizen, in 2003, and they have three children, ages 16, 14, and 12. He became a U.S. citizen in 2008. Applicant stated that he renounced his Iraqi citizenship after becoming a U.S. citizen.

Since leaving Iraq, Applicant has maintained close contact with his family members, most of whom are residents and citizens of Iraq. He has weekly telephone contact with his 73-year-old mother. His most recent in-person contact with his mother, siblings, and friends in Iraq was in 2017.

Applicant has four brothers born and raised in Iraq, ages 59, 53, 43, and 40, and four sisters, ages 51, 47 (2), and 41. The brothers, ages 59 and 40, and all four sisters are Iraqi resident-citizens. The 53-year-old brother immigrated to the United States and is a naturalized U.S. citizen. The 43-year-old brother is a citizen of Iraq, but residing in a foreign country because of his important position of trust for the Iraqi government. Applicant has weekly or monthly telephone contact with his brothers and sisters.

Applicant has in-person contact with his siblings, extended family members, and friends whenever he visits Iraq. Applicant has traveled to Iraq frequently, specifically as follows: November 2009 – March 2010; March 2013 – April 2013; August 2014 – October 2014; June 2015 – July 2015; May 2016 – June 2016; and November 2016 – July 2017. In addition to his contacts with family members, Applicant communicates quarterly with a brother-in-law who is a member of an Iraqi government commission, and two to three times a year with a high school classmate. Two of Applicant's sisters are teachers working for the Iraqi government.

During his trip to Iraq in November 2016, Applicant applied for a job with the city of Baghdad. Applicant used an Iraqi identification card that he renewed in 2008-2009 to apply for his Iraqi job. He explained that he renewed his Iraqi identification card because travelling within Iraq using U.S. identification documents is dangerous. After working for the city of Baghdad for about six months, Applicant went on extended leave in July 2017. He is able to return to his job at any time. Applicant took the job with the city of Baghdad to earn benefits under an Iraqi government program that allows prior refugees to receive a retirement of about \$325 monthly starting at age 50.

Applicant initially failed to disclose in his SCA and to government investigators during an interview that he had an Iraqi identification card that he renewed it in 2008-2009. He also failed to disclose his use of the Iraqi identification card to travel within Iraq, or about him using it to obtain employment from the city of Baghdad. Applicant omitted during a counterintelligence interview that he was hired by the city of Baghdad, and he claimed that he traveled to Iraq three times between November 2016 and July 2017, when in fact he was working in Baghdad during the whole period.

Between 2006 and about 2015, Applicant conducted business in Iraq by purchasing vehicles in the United States and shipping them to Iraqi customers for a profit. His sibling in the United States and those residing in Iraq assisted him with the business transactions.

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 mother, three brothers, and four sisters are citizen-residents of Iraq. He maintains a close relationship with his relatives in Iraq as demonstrated by his frequent contacts, communications, frequent travel, and long stays in Iraq. One of his brothers holds an important position of trust with the government of Iraq.

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; 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. 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 family members and their connections to Iraq are sufficient to establish disqualifying conditions AG ¶¶ 7(a) and 7(b).

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; 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.

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.

Considering the evidence as a whole, I find it is likely that because of his relatives in Iraq, Applicant would be placed in a position of having to choose between the interests of a family member, an Iraqi person, group, organization, of government interest and the interests of the United States. Additionally, he submitted little evidence of his ties to the United States. I considered that Applicant immigrated to the United States in 2000, married his wife (U.S. citizen) in 2003, and they have three children born in the United States. I also note his interest in working as a linguist for federal contractors. Notwithstanding, he failed to introduce evidence to demonstrate his "deep and long-standing relationships and loyalties in the United States". AG ¶¶ 8(a) and 8(b) are not mitigated.

Guideline C, Foreign Preference

AG ¶ 9 explains the concerns about foreign preference stating:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may provide information or make decisions that are harmful to the interests of the United States. Foreign involvement raises concerns about an individual's judgment, reliability, and trustworthiness when it is in conflict with U.S.

national interests or when the individual acts to conceal it. By itself; the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

Under Guideline C, the SOR alleged that Applicant applied for employment with the city of Baghdad in 2016, worked there for about six months and went on extended leave in July 2017. He has the ability to return to work at any time. Applicant anticipates receiving a pension (\$325 monthly) from the government of Iraq starting at age 50.

AG ¶ 10 indicates four conditions that could raise security concerns and may be disqualifying in this case:

(b) failure to report, or fully disclose when required, to an appropriate security official, the possession of a passport or identity card issued by any country other than the United States;

(c) failure to use a U.S. passport when entering or exiting the U.S.;

(d) participation in foreign activities, including but not limited to:

(1) assuming or attempting to assume any type of employment, position, or political office in a foreign government or military organization

Although not alleged, Applicant failed to disclose in his SCA and to government investigators that he kept an Iraqi identification card and renewed it in 2008-2009. He later explained to other government investigators that it was dangerous for him to travel in Iraq using U.S. identification documents.

Applicant used his Iraqi identification card to obtain employment with the government of the city of Baghdad in 2016, worked there for about six months, and went on extended leave in July 2017. He has the ability to return to work at any time. He anticipates receiving a pension (\$325 monthly) from the government of Iraq starting at age 50. I find the disqualifying condition in AG ¶ 10(d)(1) is established.

I considered all of the foreign preference mitigating conditions outlined under AG ¶ 11 and found them to be inapplicable to this case. I specifically considered AG ¶ 11(e): "the exercise of the entitlements or benefits of foreign citizenship do not present a national security concern". I find that under the circumstances of this case, Applicant's exercise of the entitlements or benefits of an Iraqi citizen present a national security concern. He claimed he resigned his Iraqi citizenship, but kept and renewed an Iraqi identification card without providing notice of his actions to U.S. authorities. He then used the Iraqi identification card to travel within Iraq, and used it to obtain employment

and pension rights. I find that his actions indicate a preference for Iraq over the United States. Applicant was less than candid to U.S. authorities about his Iraqi identification card, his employment in Baghdad, and his period working there.

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 guidelines 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 not mitigated the security concerns. Applicant has not carried his burden of showing that it is clearly consistent with the interests of national security of the United States to grant him eligibility for access to classified information.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. *See Dorfmont*, 913 F. 2d at 1401. Unmitigated foreign influence and foreign preference security concerns lead me to conclude that grant of a security clearance to Applicant is not warranted.

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:	AGAINST APPLICANT
Subparagraphs 1.a - 1.d:	Against Applicant

Paragraph 2, Guideline C:

AGAINST APPLICANT

Subparagraphs 2.a - 2.b:

Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national security interest of the United States to grant Applicant's eligibility for a security clearance. Clearance is denied.

JUAN J. RIVERA
Administrative Judge