



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



In the matter of:)	
)	
)	ISCR Case No. 19-03988
)	
Applicant for Security Clearance)	

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: *Pro se*

08/31/2020

Decision

DAM, Shari, Administrative Judge:

Applicant did not mitigate the foreign influence security concerns arising from his connections to family members and a friend, who are citizens and residents of Iraq, and his financial interests in the country. National security eligibility for access to classified information is denied.

History of Case

On July 17, 2019, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On March 3, 2020, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence). The action was taken under Executive Order 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective on June 8, 2017.

On March 16, 2020, Applicant answered the SOR in writing and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 4) On May 4, 2020, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing seven Items, was mailed to Applicant and received by him on May 28, 2020. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not submit a response or objections to the FORM. Items 1 through 7 are admitted into evidence. The Defense Office of Hearings and Appeals (DOHA) assigned this case to me July 28, 2020.

Procedural Ruling

I take administrative notice of facts concerning Iraq. Those facts are set out in the Government's Request for Administrative Notice for the Federal Republic of Iraq. (Item 7). The facts administratively noticed are limited to matters of general knowledge and not subject to reasonable dispute. Applicant had no objection to this request. The pertinent facts are set out in the Findings of Fact, below.

Findings of Fact

Applicant admitted the six allegations contained in the SOR. His admissions are incorporated into the findings of fact below. (Item 4)

Applicant is 58 years old and married. He was born in Iraq and graduated from high school there. He earned a bachelor's degree in engineering from an Iraqi university in 1983. He was subsequently conscripted into the Iraqi army for two years. He then worked for an Iraqi ministry from 1987 to 2010, when he left as a senior chief engineer. (Item 4)

In April 2010, Applicant went to Syria. He stated that he left Iraq because he feared for his and his family's lives. He said he had been kidnapped for one night in 2007. In August 2010, Applicant immigrated to the United States under refugee status, along with his wife and their son, who were Iraqi citizens. They became U.S. citizens in May 2016. Applicant and his family are dual citizens with Iraq. (Items 5, 6)

Upon his arrival in the United States, Applicant was unemployed until December 2010, when he obtained a short-term contract with a private company. He worked for a private food company for 15 months and was then unemployed until August 2012, when he obtained the facilities engineer position where he remains today. (Item 6)

Applicant's mother is deceased. His elderly father is a citizen and resident of Iraq. His father worked for an Iraqi ministry for over 30 years and collects a pension. Applicant contacts his father monthly. Applicant has two sisters, who are citizens and residents of Iraq. Both work for the Iraqi government. He contacts them annually. (Item 6) Applicant did not visit Iraq from 2010 to January 2019, at which time he visited his sick father for three weeks. (Item 5)

Applicant has financial interests in Iraq. In 2017, he began receiving a pension of \$450 per month from Iraq for his 20 years of government service. Applicant's friend, an Iraqi citizen and resident, collects the pension for Applicant and then wires the money to him. Applicant pays his friend 5 to 10 percent of his monthly pension for his assistance. During his August 2019 background interview with a government investigator, Applicant stated that he was not willing to give up this pension because he uses it to support his family in the United States. (Item 5)

Applicant owns an apartment in Iraq with an estimated value of \$40,000 to \$50,000. He said he owns it on behalf of his spouse and sister-in-law, who cannot legally own the property. To date, his wife and sister-in-law have not chosen to sell the property. (Item 5) Applicant rents his home in the United States. (Item 4) He did not submit any evidence pertinent to his financial interests in the United States.

Iraq

I have taken administrative notice of facts contained in U.S. Government documents concerning the Federal Republic of Iraq, as outlined in Item 7, including the following: Iraq faces many challenges fueled by sectarian and ethnic divisions. Numerous terrorist groups are increasingly active throughout Iraq. The Islamic State of Iraq and the Levant (ISIL or Islamic State) controls some of the country's territory. Threats of kidnapping and violence are high, and the Department of State warns U.S. citizens that all travel to Iraq should be avoided. Additionally, human-rights-related problems including disappearances, torture, denial of fair public trial, and limits on freedom of expression, are present.

Policies

When evaluating an applicant's suitability for national security eligibility, 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 to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline B: Foreign Influence

¶ 6: The security concern relating to the guideline for foreign influence is set out in AG

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.

The guideline describes conditions that could raise security concerns and may be disqualifying under AG ¶ 7. Three 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, 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.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, that factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Iraq has significant numbers of internal anti-western terrorists who operate openly and contrary to U.S. interests. Accordingly, Applicant's close connections to a friend and three family members, who have ties to the Iraqi government, generate significantly heightened risks of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶ 7(a).

Applicant has ongoing contacts with his father, two sisters, and a friend, who are citizens and residents of Iraq. He visited his family for three weeks in 2019 to see his father. He has ongoing contact with a friend, who sends Applicant his monthly pension check from the Iraqi government. Applicant also legally owns an apartment in Iraq. These personal and financial relationships create a heightened risk of foreign pressure or attempted exploitation because terrorists or insurgents in Iraq engage in behaviors that are hostile to the United States' interests. Those connections also create a potential for conflict of interest between Applicant's obligation to protect sensitive information or technology and his desire to help family members living in Iraq or protect his financial interests. The evidence is sufficient to raise a disqualification under AG ¶ 7(b).

Since 2017, Applicant has received a \$5,400 annual pension from the Iraqi government, which he does not want to relinquish. Although he said that his wife and sister-in-law own his apartment in Iraq, he has legal ownership of the property, which is worth \$40,000 to \$50,000. Those two financial interests are sufficient to raise disqualifying concerns under AG ¶ 7(f).

After the Government produced sufficient evidence of those disqualifying conditions, the burden shifted to Applicant to rebut them or otherwise prove mitigation. Four mitigating conditions under AG ¶ 8 are potentially applicable to the disqualifying security concerns based on these facts:

(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;

(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; 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.

Considered in light of the anti-western insurgent threats in Iraq, Applicant did not sufficiently demonstrate that it is unlikely he could be placed in a position of having to choose between the interests of a foreign individual or government and those of the United States due to his personal and financial ties to Iraq. In fact, he noted that one of the reasons he immigrated to the United States was because he and his family were not safe in Iraq, and he had been kidnapped in 2007.

Applicant has monthly contact with his father, who worked for the Iraqi government and now collects a pension. He has annual contact with his two sisters, who work for the Iraqi government. He has monthly contact with a friend, who transmits Applicant's pension check to him. Applicant has legitimate and appropriately close relationships with those family members and friend, and also a strong interest in protecting them. His communication and contact with them are ongoing. Accordingly, he failed to establish the mitigating conditions set out in AG ¶¶ 8(a) and (c).

The evidence also fails to establish sufficient mitigation under AG ¶ 8(b). A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the United States." The record does not contain persuasive documentation as to the extent of Applicant's personal and financial connections to the United States. He and his family arrived here in August 2010 and became citizens in 2016, about four years

ago. He rents his home. He has worked for private companies periodically, and also experienced periods of unemployment. While these facts demonstrate a growing connection to the United States, they do not outweigh his 40 years of history and ongoing familial relationships with Iraq. There is insufficient evidence to conclude that Applicant's U.S. ties are sufficiently deep and longstanding that he can be expected to resolve any conflict of interest involving his family in Iraq in favor of the U.S. interests. Accordingly, he did not mitigate the foreign influence security concerns under this condition.

Applicant did not provide information about his finances, the value of his assets, or property interests he has in the United States. Consequently, there is insufficient evidence to determine whether his assets in the United States sufficiently outweigh his Iraqi assets, and are unlikely to result in a conflict of interest that could be used to pressure him. He did state that he needed his Iraqi pension to help support his family in the United States. He did not establish mitigation under AG ¶ 8(f).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility by considering the totality of the applicant's conduct and all relevant 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all 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.

The foreign influence security concerns do not arise from any questionable conduct by Applicant, but rather circumstances that are the normal results of his familial ties and years of living in Iraq. There is no evidence that he has ever taken any action that could cause potential harm to the United States. However, after weighing the disqualifying and mitigating conditions, and all pertinent facts and circumstances in the context of the whole-person, I conclude Applicant failed to sufficiently mitigate the security

