



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



In the matter of: )  
)  
) ISCR Case No. 19-00163  
)  
Applicant for Security Clearance )

**Appearances**

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

06/02/2021

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

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

**Statement of the Case**

On March 13, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence. Applicant responded to the SOR on July 5, 2019, and requested a decision on the written record in lieu of a hearing. The Government’s written case was submitted on December 23, 2019, through a file of relevant material (FORM). Department Counsel amended the SOR in the FORM by adding language to SOR ¶¶ 1.b and 1.d.

On January 23, 2020, Applicant changed his request to a hearing before an administrative judge. He did not address the amended SOR allegations. The case was assigned to me on March 10, 2021. The hearing was convened as scheduled on March 29, 2021. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified, but he did not submit any documentary evidence.

Department Counsel requested that I take administrative notice of certain facts about Iraq. 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.

### **Findings of Fact**

Applicant is a 42-year-old prospective employee of a defense contractor. He is applying for a security clearance for the first time. He will be hired if he receives a security clearance. He has the equivalent of a bachelor's degree from an Iraqi university. He is married with two children. (Transcript (Tr.) at 20-21, 70-71; GE 1)

Applicant was born in Iraq to Iraqi parents. He worked under dangerous conditions in Iraq as a linguist in support of the U.S. mission from 2003 to 2004, and again from 2007 to 2009. Because of his work, he was eligible for a special immigrant visa. He immigrated to the United States in 2010, and he became a U.S. citizen in 2015. (Tr. at 20-29; Applicant's response to SOR; GE 1, 2)

Applicant married his wife in Iraq in 2009. She immigrated to the United States with Applicant, and she also naturalized as a U.S. citizen. Their children were born in the United States. (Tr. at 20-21, 29-30; GE 1, 2)

Applicant's parents worked as geologists for the Iraqi government before they immigrated to the United States in 2014. They became U.S. citizens in about 2019. They live about a short distance from Applicant and spend a lot of time with their grandchildren. (Tr. at 34-43; GE 1, 2)

Applicant's two brothers, parents-in-law, brothers-in-law, sisters-in-law, aunts, uncles, and other extended family members are citizens and residents of Iraq. His brothers' applications to immigrate to the United States are pending. One brother was able to apply to immigrate in his own right because he also worked in support of the U.S. mission. Applicant sponsored his other brother for immigration. (Tr. at 51-58; Applicant's response to SOR; GE 1-3)

Applicant's parents-in-law applied to immigrate to the United States, but the applications were denied. His father-in-law was a senior military officer, but he retired about 18 years ago. He worked in Iraq for a U.S. multinational corporation for about 5 years, and he has been retired for about 13 years. (Tr. at 44-48, 67; Applicant's response to SOR; GE 1-3)

Applicant's uncle was a senior official in Iraqi intelligence under the Saddam Hussein regime. Applicant believes his uncle worked for the United States for a period in about 2003 to 2004. He has worked in a shop for about 15 years. His application to immigrate to the United States was denied. (Tr. at 59-67; Applicant's response to SOR; GE 1-3)

Applicant and his wife have assisted several family members and friends to immigrate to the United States. Applicant has not returned to Iraq since he arrived in the United States in 2010. His wife made three trips to Iraq with their children to visit their family, and she expected to make another trip. Applicant expressed his undivided loyalty to the United States. He credibly testified that his family in Iraq could not be used to coerce or intimidate him into revealing classified information, and that he would report any attempt to do so (Tr. at 28, 31, 68-72, 82-84; Applicant's response to SOR; GE 2)

## **Policies**

This case is adjudicated 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), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines 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."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the 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." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard

classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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**

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.

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
- (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.

Applicant’s brothers, parents-in-law, brothers-in-law, sisters-in-law, aunts, and uncles are citizens and residents of Iraq. The potential for terrorist violence against U.S.

interests and citizens remains high in Iraq, and it continues to have human rights problems. Applicant's foreign contacts create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. The above disqualifying conditions have been raised by the evidence.

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

(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 ties to Iraq. 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 is a loyal U.S. citizen who has worked overseas under dangerous conditions in support of the national defense. He credibly testified that his family in Iraq could not be used to coerce or intimidate him into revealing classified information. The Appeal Board has stated that such a statement, standing alone, is of limited value, unless there is record evidence that the applicant has acted in a similar manner in the past in comparable circumstances, or that the applicant has a previous track record of complying with security regulations and procedures in the context of dangerous, high-risk circumstances in which he made a significant contribution to the national security. See, e.g., ISCR Case 07-06030 at 3-4 (App. Bd. June 19, 2008). In ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006), the Appeal Board discussed this issue as follows:

As a general rule, Judges are not required to assign an applicant's prior history of complying with security procedures and regulations significant probative value for the purposes of refuting, mitigating, or extenuating the security concerns raised by that applicant's more immediate disqualifying conduct or circumstances. See, e.g., ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No. 02-10113 at 5 (App. Bd. Mar. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd. May 30, 2006). However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the national

security. See, e.g., ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006). The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report a foreign power's attempts at coercion or exploitation.

Applicant worked under dangerous conditions as a linguist in support of the U.S. mission from 2003 to 2004, and again from 2007 to 2009, which earned him a special immigrant visa. His closest family, which includes his wife, children, and parents, are U.S. citizens and residents. I find that Applicant can be expected to resolve any potential conflict of interest in favor of the United States. AG ¶ 8(b) is applicable.

### **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 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.

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 have incorporated my comments under Guideline B in my whole-person analysis.

Applicant's work with the U.S. mission in Iraq earned him a special immigrant visa. The Appeal Board has held that "an applicant's proven record of action in defense of the United States is very important and can lead to a favorable result for an applicant in a Guideline B case." ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007). The complicated state of affairs in Iraq places a significant burden of persuasion on Applicant to demonstrate that his family members in Iraq do not pose an unacceptable security risk. He has met that burden.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude 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.d: For Applicant

## **Conclusion**

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Edward W. Loughran  
Administrative Judge