



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 19-01420
)
 Applicant for Security Clearance)

Appearances

For Government: Eric Price, Esq., Department Counsel
For Applicant: Troy Nussbaum, Esq.

03/29/2021

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines B (Foreign Influence), F (Financial Considerations), and E (Personal Conduct). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 1, 2018. On June 26, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guidelines B, F, and E. The DOD CAF acted under Executive Order (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on August 13, 2019, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 1,

2020, and the case was assigned to me on November 12, 2020. On November 19, 2020, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for December 16, 2020.

Applicant retained counsel, who requested that the hearing be postponed. I granted the request for postponement, and on December 10, 2020, DOHA notified Applicant that the hearing was rescheduled for January 28, 2021. I convened the hearing as rescheduled. Government Exhibits (GX) 1 through 7 were admitted in evidence without objection. Department Counsel requested that I take administrative notice of relevant facts about Iraq (GX 8), and I granted the request without objection from Applicant. On my own motion, and without objection from either party, I also took administrative notice of the facts in the Department of State Fact Sheet on U.S. Relations with Iraq, dated December 14, 2020 (www.state.gov/u-s-relations-with-iraq). The facts administratively noticed are set out below in my findings of fact.

Applicant testified and submitted Applicant's Exhibits (AX) A through D, which were admitted without objection. I kept the record open until February 16, 2021, to enable her to submit additional documentary evidence. She timely submitted AX E through I and additional argument. AX E through I were admitted without objection, but Department Counsel challenged the additional argument. Applicant's additional argument is attached to the record as Hearing Exhibit (HX) I. Department Counsel's comments are attached to the record as HX II. DOHA received the transcript (Tr.) on February 10, 2021.

Findings of Fact

In Applicant's answer to the SOR, she admitted the allegations in SOR ¶¶ 1.a-1.d and 2.a-2.d. She denied the allegations in SOR ¶¶ 1.e and 3.a. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 52-year-old linguist who has been offered employment by a defense contractor, contingent on her ability to obtain a security clearance. She has never held a security clearance.

Guideline B, Foreign Influence

Applicant was born in Baghdad, Iraq in July 1968. She lived in Syria from September 2006 to December 2008. She was granted refugee status and came to the United States in December 2008. (Tr. 24.) She became a U.S. citizen in January 2014.

Applicant attended college in Iraq for three years in business-related studies, but she did not receive a degree. She took college courses in the United States from September 2009 to August 2014 and received an associate's degree in marketing. (Tr. 25, 67.)

Applicant married an Iraqi citizen in September 1991. Her husband is 67 years old, a naturalized U.S. citizen, and a retired engineer. He is currently employed as a cashier in a grocery store in the United States. (Tr. 26.)

Applicant's mother and father are citizens and residents of Iraq. They are both retired high-school teachers. They live in Kurdistan, one of the safer places in Iraq. Applicant has three children, ages 28, 25, and 22, all citizens and residents of the United States. Her oldest daughter is a pharmacy technician. Her middle daughter is a property manager for a rental company. Her youngest daughter was unemployed at the time of the hearing but had been offered a job as an apartment leasing agent. (Tr. 25-26.) Her 53-year-old brother is a citizen and resident of the United States. He was employed by a U.S. government agency engaged in clinical research and held a public trust position. He now does clinical research in the United States for COVID-19 vaccines. (Tr. 28-29.) Her 40-year-old sister is a citizen and resident of Iraq, employed by a U.S.-based company that operates a private Christian school in Iraq. (GX 2 at 3.) Applicant speaks with her parents about once a week and with her sister about once every two months. (Tr. 32.) Her relationships with her parents and sister are alleged in SOR ¶ 1.a-1.c.

When Applicant and her husband were living in Iraq, Applicant owned and operated a construction company and worked as a subcontractor for a U.S. contractor for three years. (Tr. 34-35, 68.) She was responsible for marketing, and her husband was responsible for supervising construction. She did not review the contracts with the U.S. contractor because of language issues, and her part of the contracting process amounted to a "couple emails." (Tr. 69.) Her parents and siblings did not know that she was working for a U.S. contractor. (Tr. 41-42.)

Applicant's husband was kidnapped in 2006. She believed it was because of their support for the U.S. forces. (Tr. 38.) The U.S. contractor for whom Applicant subcontracted paid a \$50,000 ransom to secure his release. (AX D at 1.) After Applicant's husband was released, he and their daughters moved to Syria. At the end of 2006, after her family had moved to Syria and while she was still in Iraq, she was traveling with a driver when they were stopped by local militia, who demanded her identification. She showed them only her Iraqi identification and hid her passport because it reflected a visa for travel to the United States. She was pulled from the vehicle and was beaten because of the way she was dressed. (Tr. 39-40.)

After coming to the United States, Applicant worked as a part-time interpreter from June 2009 to August 2010. She was unemployed from September 2010 to September 2011. She worked in the private sector from September 2011 to May 2015. She and her husband started a business in February 2012, working from their home in the United States to act as an intermediary for providing for goods and services to U.S.-based companies in Iraq, Iraqi companies, and the Iraqi government. Her husband made all the contacts and managed the finances. (Tr. 72-73.) Applicant's husband had some contacts with the Iraqi government, but he refused to share the information about his contacts with Applicant. His refusal to share information with Applicant and their disagreements about the scope of the business caused marital stress to the extent that she was contemplating

divorce when she underwent a personal subject interview (PSI) by a security investigator in April 2018. (GX 2 at 4.) The company was unsuccessful, and Applicant sought employment elsewhere in August 2014, although the company was not dissolved until 2016. (GX 1 at 25; GX 2 at 2-3; Tr. 45.)

Applicant returned to Iraq with one of her daughters in 2015, because she was having discipline problems with her daughter and wanted to show her daughter how much better their life was in the United States. Applicant intended to live in Iraq with her daughter for one year. (Tr. 77.) She worked as a marketing manager for a U.S. company in Iraq from June to December 2015. She returned to the United States about six months sooner than she planned when one of her other daughters was involved in a serious car accident. (Tr. 76.) She was unemployed from January to May 2016. She has worked for various employers in the private sector since May 2016. She had started working as a sales associate for an automobile dealership when she had her PSI in April 2018, but her employer asked her to resign when she applied for a job as a linguist. (Tr. 114-15.) For the past two years, she has been employed part time as a concierge in several apartment buildings.

In 2018, Applicant was asked for help by an Iraqi woman who was in the United States on green card, worked in the Iraqi Embassy in the United States, was pregnant, and whose husband was in Iraq. The record does not reflect that nature of the woman's work in the Iraqi Embassy. Applicant testified that when they met, the woman was a student at a local university and was not working in the embassy. (Tr. 116.) Applicant testified that her relationship with the woman was not a "friendship," but a helping relationship because the woman was experiencing emotional and physical problems related to her pregnancy. Their relationship ended at the end of 2018, and they had no further contact. (Tr. 43-45.) Their relationship is alleged in SOR ¶ 1.d.

Applicant last visited her family in Iraq in 2019 to attend a funeral for her aunt. At that time, she complied with the Iraqi cultural requirement to obtain her parents' approval for her daughter's marriage in the United States. (Tr. 42.)

Applicant's mother owns two properties in Iraq that are worth about \$50,000. Applicant and her brother have decided that they will give their share of their inheritance to their sister in Iraq in recognition of the fact that their sister has been the sole caregiver for their parents. At the hearing, Applicant did not know if their agreement had been formalized in writing. (Tr. 32-33.) Applicant's potential inheritance is alleged in SOR ¶ 1.e.

Iraq is a constitutional parliamentary republic. The 2018 parliamentary elections generally met international standards for free and fair elections and led to the peaceful transfer of power from Prime Minister Haider al-Abadi to Adil Abd al-Mahdi. In December 2019, Prime Minister Abd al-Mahdi submitted his resignation in response to protester's demand for changes to the political system, and the Iraq Council of Representatives accepted his resignation. In May 2020, Iraq's parliament confirmed Mustafa al-Kadhimi as prime minister, and in June 2020, the parliament confirmed his cabinet members, ending the deadlock in government leadership. Prime Minister al-Kadhimi declared that

his government would serve in a transitional capacity while preparing for elections in June 2021.

The United States is committed to building a strategic partnership with Iraq. Iraq is a key partner for the United States in the region and a voice of moderation and democracy in the Middle East. It has a functioning government and is playing a constructive role in the region. The United States maintains vigorous and broad engagement with Iraq on diplomatic, political, economic, and security issues. None of the administrative notice documents indicate that government of Iraq targets the United States for economic or military intelligence, although it is likely that various terrorist and insurgent groups seek military intelligence regarding U.S. military units operating in Iraq.

Numerous terrorist and insurgent groups are active in Iraq, including ISIS and anti-U.S. sectarian militias. Rocket and improvised explosive device (IED) attacks against U.S. and Iraqi facilities and convoys are common. U.S. citizens in Iraq are at high risk for violence and kidnapping. Numerous terrorist and insurgent groups are active and regularly attack Iraqi security forces and civilians. Anti-U.S. sectarian militias are directed at U.S. citizens and Western companies throughout Iraq. Militia groups kidnap local residents, foreign workers, and members of international organizations and demand ransoms from their families or their employers. The U.S. Department of State travel advisory for Iraq is Level 4 (“do not travel”), due to terrorism, kidnapping, and armed conflict.

An overwhelming number of human-rights abuses were committed by ISIS, including attacks on civilians. However, human-rights abuses by Iraqi civilian authorities and other state-sponsored organizations also have occurred. They included disappearances; cruel and degrading treatment or punishment; hard and life-threatening conditions in detention and prison facilities; insufficient judicial institutional capacity; ineffective implementation of civil judicial procedures and remedies; limitations on freedom of expression; social, religious, and political restrictions in academic and cultural matters; and abuse of women and ethnic, religious and racial minorities.

The U.S. State Department has substantiated reports of human rights abuses in Iraq, including a climate of violence; misappropriation of authority by sectarian, criminal, and insurgent groups; arbitrary killings; torture; and other cruel, inhuman or degrading treatment or punishment. The Iraqi government’s effectiveness in adhering to the rule of law is hampered by ongoing violence, corruption, sectarian bias, and lack of oversight and accountability. Treatment of detainees has been generally poor. The judiciary is weak, and judicial independence is impaired by threats and killings by insurgent, sectarian, tribal, and criminal elements. Security threats hinder civilians’ access to the courts, and witness intimidation is common.

In January 2020, the U.S. military executed a drone strike that killed a Iranian general who was in Iraq. The Iraqi government condemned the strike as a violation of Iraqi sovereignty, and the Iraqi legislature directed the Iraqi government to remove all foreign forces from Iraq and end the use of Iraqi territory, waters, and airspace by foreign

military forces. In response, the U.S. Embassy in Iraq urged all American citizens to depart Iraq immediately.

Guideline F, Financial Considerations.

The SOR alleges four delinquent debts reflected in the credit reports from March 2018, April 2019, and October 2020 (GX 5, 6, and 7.) During the PSI in April 2018, she told an investigator that she had been unable to resolve the debts while she was unemployed, but she had just begun working as a sales associate for a car dealer and intended to pay them. (GX 2 at 6.) She lost her job shortly after the interview, when her employer learned that she had applied for a job as a linguist.

Applicant testified that she has about \$250 in her bank account, but no retirement account, savings, or investments. She does not own a car, but her husband owns a 15-year-old compact car. (Tr. 80.) Her daughters help her financially. (Tr. 59) Her husband refuses to assist with paying the family bills. Applicant testified that her husband told her that he had taken care of the family for 25 years and now it was her turn to take care of everything. (Tr. 119.) Applicant tried using a debt-resolution company to assist her, but she terminated the contract after three months because the company made no progress. (Tr. 119-20.)

The evidence concerning the delinquent debts alleged in the SOR is summarized below:

SOR ¶ 2.a: retail-store charge account charged off for \$5,615. This account was charged off in May 2016. (GX 5 at 2.) Applicant testified that she contacted this creditor in December 2020, but the creditor insisted on full payment and would not make a payment agreement. (Tr. 96.) She decided to make minimum payments until she could make a payment agreement or pay the amount due in full. (Tr. 96.) She made \$15 payments on December 7, 2020, and January 4, 2021. (AX C.)

SOR ¶ 2.b: credit-card account charged off for \$3,000. This account was charged off in January 2016. (GX 6 at 2.) In November or December 2020, Applicant made a payment agreement providing for payments of \$375, and she made her final payment in January 2021. (AX A.) This debt is resolved.

SOR ¶ 2.c: department-store charge account charged off for \$2,508. This account was charged off in January 2016. (GX 5 at 3.) Applicant testified that she contacted this creditor in December 2020, but the creditor would not make a payment agreement. (Tr. 96.) She decided to make minimum payments until she could make a payment agreement or pay the amount due in full. (Tr. 96.) She made \$15 payments in December 2020 and January 2021. (AX C; AX E.)

SOR ¶ 2.d: credit-card account charged off for \$2,100. This account was charged off in February 2016. (GX 6 at 2.) She made a \$50 payment in December 2020. (AX C.) In January 2021, she made an agreement providing for monthly payments of

\$137. (AX B; Tr. 98-99.) She made the required \$137 payment in February 2021. (AX F; AX G.)

Applicant told an investigator during the April 2018 PSI that she believed that the four debts alleged in the SOR were cancelled. She realized her debts had not been cancelled after she was questioned about them during the PSI. She told the investigator that she was unemployed and unable to make any payments on them, but that she intended to start making payments when she started receiving the commissions she earned from selling cars. She was unable to keep that promise because the automobile dealer terminated her when he learned that she had applied for a job as a linguist.

Guideline E, Personal Conduct

The SOR alleges that Applicant deliberately falsified her SCA by answering “No” to the questions about financial delinquencies and failing to disclose the debts alleged in the SOR. The investigator’s summary of the April 2018 PSI includes the statement, “She was not sure why she did not list this required information.” (GX 2 at 6.) At the hearing, she testified that at the time of the PSI, she was not sure if she still had delinquent debts. (Tr. 63.) In her answer to the SOR, she stated that she thought “charged off” meant that the debt was cancelled.

Character Evidence

A retired federal employee, who is working as a full-time volunteer for a charitable organization for Iraqi orphans, met Applicant in 2016 and considers her creative, reliable, loyal, and trustworthy. (AX D at 2.)

Applicant’s 25-year-old daughter remembers vividly how strong her mother was when their father was kidnapped and how her mother became the family provider when their father had difficulty finding employment in the United States. She admires her mother for her courage and commitment. (AX D at 3.)

Applicant’s 28-year-old daughter describes Applicant as a role model and “a great example of the American dream.” She admires Applicant for many reasons, “but mainly for her ability to continue pushing forward through every obstacle she faces.” She considers Applicant “a positive and ambitious individual who only knows love and loyalty for this country.” (AX I.)

A tenant who has observed Applicant working as a “conciierge” for their apartment complex admires her for her trustworthiness, hard work, attention to detail, and proactive approach to her job. (AX D at 4.)

Applicant’s sister describes Applicant as the family protector who has an “appreciation for the American democracy and way of life” and who wants her children to “have a life where liberty and freedom is a right—not a privilege.” She considers Applicant

to be “a determined woman who has found her home and comfort in the United States.” (AX H.)

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline B, Foreign Influence

The SOR alleges that Applicant’s mother, father, and sister are citizens and residents of Iraq (SOR ¶¶ 1.a-1.c). It also alleges that she has a friend who is a citizen of Iraq and is employed by the embassy of Iraq (SOR ¶ 1.d). Finally, it alleges that Applicant and her siblings will inherit their mother’s two properties in Iraq with a value of about \$50,000 (SOR ¶ 1.e).

The security concern under this guideline 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 maybe 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 following disqualifying conditions under this guideline are potentially applicable:

AG ¶ 7(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;

AG ¶ 7(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;

AG ¶ 7(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; and

AG ¶ 7(g): unauthorized association with a suspected or known agent, associate, or employee of a foreign intelligence entity.

AG ¶¶ 7(a), 7(d), 7(e) and 7(f) all require substantial evidence of a “heightened risk.” The “heightened risk” required to raise one of these disqualifying conditions is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. *See, e.g.*, ISCR Case No. 12-05839 at 4 (App. Bd. Jul. 11, 2013). “Heightened risk” is not a high standard. *See e.g.*, ISCR Case No.17-03026 at 5 (App. Bd. Jan. 16, 2019).

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.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.” ISCR Case No. 00-0317 (App. Bd. Mar. 29, 2002). Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields.

Nevertheless, 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, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. *See generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided). When family members are involved, the totality of an applicant’s family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003).

The citizenship and residences of Applicant’s mother, father, and sister are sufficient to establish the allegations in SOR ¶¶ 1.a-1.c and raise the heightened risk in

AG ¶ 7(a) and the potential conflict of interest in AG ¶ 7(b). The evidence supporting the allegation in SOR ¶ 1.e is inconclusive. Applicant's mother owns two properties in Iraq, but she and her brother have decided to give their potential inheritance rights to their sister in recognition of the care she has provided for their aged and ailing parents. However, there is no documentary evidence that they have carried out their intent to give up their inheritance rights.

The allegation in SOR ¶ 1.d is established. An applicant's ties, either directly or through a family member, to persons of high rank in a foreign government or military are of particular concern, insofar as it is foreseeable that through an association with such persons the applicant could come to the attention of those interested in acquiring U.S. protected information. See, e.g., ISCR Case No. 08-10025 at 2 and 4 (App. Bd. Nov. 3, 2009) (Applicant's brother was a high-level foreign government official); ISCR Case No.11-04980 at 2 and 6 (App. Bd. Sep. 21,2012) (Applicant's sister-in-law was married to a retired high-ranking official in a foreign army); and ISCR Case No. 11-12632 at 2 and 5 (App. Bd. Feb. 2, 2015) (Applicant's niece was an employee of a high-ranking foreign government official). Applicant does not know for whom her friend worked. She thought her friend was a "first secretary," but was unsure. In any event, this allegation has been overcome by events, because the relationship ended in 2018.

The following mitigating conditions are potentially applicable:

AG ¶ 8(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;

AG ¶ 8(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;

AG ¶ 8(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

AG ¶ 8(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.

AG ¶ 8(a) is not established. Although Applicant's parents and sister reside in a somewhat safer part of Iraq, the dangers from terrorism, insurgency, lawlessness, and armed conflict preclude application of this mitigating condition.

AG ¶ 8(b) is established. Applicant, her spouse, her brother, and her children are U.S. citizens and residents. Her children are pursuing careers in the United States. Applicant had a track record of supporting the interests of the United States until her husband was kidnapped. She is a strong-willed and determined woman, fiercely devoted to the United States, and not easily intimidated.

AG ¶ 8(c) is not established. There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002). Applicant has not rebutted this presumption regarding her contacts with her sister in Iraq.

AG ¶ 8(f) is established. Although the value of the properties owned by Applicant's mother is significant, Applicant and her brother have no desire to inherit them. Furthermore, because of the uncertainties surrounding the expectancy of an inheritance, an applicant does not have a financial stake in a country merely because he or she may inherit real or personal property at some time in the future from his or her parents who currently reside in that country. ISCR Case No 97-0403 at 3 (App. Bd. May 13, 1998).

Guideline F, Financial Considerations

The SOR alleges four charged-off debts. The security concern under this guideline is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and the documentary evidence submitted at the hearing establish three disqualifying conditions under this guideline:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so; and

AG ¶ 19(c): a history of not meeting financial obligations.

The following mitigating conditions are potentially applicable:

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) is not established. Applicant's delinquent debts are recent, frequent and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is established. Applicant's debts are the result of unemployment, underemployment, and her husband's refusal to provide financial support. She has acted responsibly by contacting her creditors, establishing payment plans, and making minimal payments on the debts for which she was unable to negotiate payment plans.

AG ¶ 20(c) is not established. Applicant hired a debt-resolution company for a short time, but it did not provide the financial counseling contemplated by this mitigating condition.

AG ¶ 20(d) is established. Applicant has paid off the debt alleged in SOR ¶ 2.b, has negotiated a payment agreement for the debt alleged in SOR ¶ 2.a, and is making minimal payments on the two remaining debts until she can negotiate payment agreements or pay them in full. The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicants are not held to a standard of perfection in their debt-resolution efforts or required to be debt-free. “Rather, all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by ‘concomitant conduct,’ that is, actions which evidence a serious intent to effectuate the plan.” ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017). See, e.g., ISCR Case No. 13-00987 at 3, n. 5 (App. Bd. Aug. 14, 2014). Applicant has a reasonable and credible plan and has taken significant action to implement it.

It is well established that past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. Applicants who begin to address their security-significant conduct only when their personal interests are at stake may be lacking in judgment and reliability. ISCR Case No. 16-01211 (App. Bd. May 30, 2018). However, in this case, Applicant did not realize that her debts were not cancelled until she was interviewed by a security investigator. She could not begin making payments immediately, because she was unemployed. As soon as she found employment, she contacted her creditors and began resolving her debts.

Notwithstanding Applicant’s meager earnings as a concierge, she has paid off one debt, negotiated a payment agreement for a second debt, and has been making token payments on the two remaining debts. The evidence indicates that Applicant’s recent progress in resolving her debts is not motivated by self-interest but by a sense of obligation.

Guideline E, Personal Conduct

The security concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . .

The relevant disqualifying condition under this guideline is AG ¶ 16(a):

[D]eliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant’s state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4

(App. Bd. Nov. 17, 2004). An applicant's experience and level of education are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

Although Applicant is a well-educated adult, English is not her first language. The belief that charged-off debts are cancelled is a common misperception in financial cases. She had no prior experience with the security-clearance process and no experience in interpreting credit reports. She readily admitted the charged-off debts during the PSI and at the hearing. She has a reputation for trustworthiness. I am satisfied that she did not deliberately falsify her SCA. AG ¶ 16(a) is not established. No other disqualifying conditions under this guideline are established.

Whole-Person Concept

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. In applying the whole-person concept, an 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. 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 Guidelines B, F, and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Applicant has endured multiple hardships, and she has amply demonstrated her resilience, determination, and loyalty to the United States. She was sincere and credible at the hearing. After weighing the disqualifying and mitigating conditions under these guidelines and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by her family, social, and financial connections to Iraq; her delinquent debts; and her failure to disclose her delinquent debts in her SCA.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline B (Foreign Influence): FOR APPLICANT

Subparagraphs 1.a-1.e: For Applicant

Paragraph 2, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 2.a-2.d: For Applicant

Paragraph 3, Guideline E (Personal Conduct): FOR APPLICANT

Subparagraph 3.a: For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

LeRoy F. Foreman
Administrative Judge