



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



In the matter of:)
)
) ISCR Case No. 19-01777
)
Applicant for Security Clearance)

Appearances

For Government: Nicholas Temple, Esq., Department Counsel
For Applicant: *Pro se*

05/12/2021

Decision

HARVEY, Mark, Administrative Judge:

Applicant mitigated Guidelines F (financial considerations) and B (foreign influence) security concerns, and he refuted Guideline E (personal conduct) security concerns. He filed his federal and state income tax returns for tax year 2014 in April 2016, and this mistake is not recent. His failure to disclose the late filing of his tax returns on his August 2, 2017 Questionnaire for National Security Position (SF 86) or security clearance application (SCA) was not made with intent to deceive. Applicant is close to about 14 individuals living in Iraq, and they are subject to serious risk of death if terrorists discover he is helping the United States against their interests. However, he went on over 280 combat missions with special forces units as a linguist. On multiple occasions, he was exposed to death or serious injury during his assistance to the U.S. armed forces. His character witnesses lauded his reliability, bravery, and trustworthiness. Eligibility for access to classified information is granted.

Statement of the Case

On August 2, 2017, Applicant completed and signed an SCA. (GE 1). On October 29, 2019, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National*

Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guidelines F, E, and B. (HE 2)

Applicant provided an undated response to the SOR, and on November 23, 2019, he requested a decision without a hearing. (HE 3) Department Counsel requested a hearing. On May 1, 2020, Department Counsel was ready to proceed. On June 18, 2020, the case was assigned to me. Processing of the case was delayed due to the Corona Virus. On February 24, 2021, the Defense Office of Hearings and Appeals (DOHA) issued a notice scheduling the hearing for March 8, 2021. (HE 1) The hearing was held as scheduled in the vicinity of Arlington, Virginia, using the U.S. Cyber Command video teleconference system. (*Id.*) Applicant waived his right under the Directive to 15 days of notice of the date, time, and location of the hearing. (Transcript (Tr.) 15)

Department Counsel provided two exhibits, which were admitted into evidence without objection. (Tr. 18-19; Government Exhibit (GE) 1-GE 2) Applicant did not provide any exhibits at his hearing. (Tr. 21) On March 17, 2021, DOHA received the transcript of the hearing. After the hearing, Applicant provided three exhibits, which were admitted without objection. (Applicant Exhibit (AE) A (22 pages), AE B (12 pages); and AE C (9 pages)) The record was scheduled to close on March 22, 2021; however, it remained open until April 11, 2021, to permit the parties to submit additional documentation. (Tr. 100; AE B; HE 6)

Legal Issues

Department Counsel moved to amend SOR ¶ 3.a to change the date of Applicant's SCA from January 25, 2018, to August 2, 2017. (Tr. 16) Applicant did not object, and I granted the motion to amend. (Tr. 16) I changed SOR ¶ 3.a as requested, and I initialed and dated the change on the SOR.

Department Counsel requested administrative notice concerning Iraq. (Tr. 19-20) Applicant did not object to Department Counsel's request for administrative notice. (Tr. 21) Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 16-02522 at 2-3 (App. Bd. July 12, 2017); ISCR Case No. 05-11292 at 4 n. 1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n. 4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

I granted Department Counsel's request for administrative notice concerning Iraq. Department Counsel's request is substantially quoted in the Iraq section with minor grammatical and punctuation changes and without footnotes. In addition, I advised the parties that I might supplement the record with information from the U.S. Department of State website. The last two paragraphs in the Iraq section are largely quoted from the U.S. Department of State website, *U.S. Relations With Iraq* (Dec. 14, 2020), available at <https://www.state.gov/u-s-relations-with-iraq/>. (HE 5)

The parties did not request administrative notice of facts concerning Jordan. Since neither party requested administrative notice of facts regarding Jordan, and based on the decision in ISCR Case No. 17-03026 (App. Bd. Jan, 16, 2019), I decided that absent an objection, I intended to take administrative notice of the below facts concerning Jordan. On April 4, 2021, I asked for any objections or other facts for administrative notice to be provided to me not later than April 11, 2021. (HE 6) I *sua sponte* took administrative notice of facts concerning Jordan from ISCR Case No. 17-03266 (A.J. Sept. 11, 2018). Essentially, the security concerns from the risk of terrorism and insurgents in Jordan are similar but less extreme in comparison to those in Iraq. There were no objections to the proposed administrative notice concerning Jordan.

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript. ISCR and ADP decisions and the Directive are available at <https://ogc.osd.mil/doha/isp.html>.

Findings of Fact

In Applicant's SOR response, he denied all of the SOR allegations in SOR ¶¶ 1.a through 1.d and ¶ 2.e. (HE 3) He admitted SOR ¶¶ 2.a through 2.d, ¶ 2.f, and ¶ 3.a. (*Id.*) He also provided mitigating information. (*Id.*)

Applicant is a 44-year-old Iraqi and United States dual citizen who seeks a security clearance to enable him to regain employment as a linguist. (Tr. 7) In 1995, he graduated from high school in Iraq, and in 1998, he graduated from a technical institute in Iraq. (Tr. 7) From 2005 to 2008, he served as a linguist with U.S. armed forces in Iraq. From 2009 to 2010, Applicant worked as a part-time role player for the U.S. Army in the United States. (November 7, 2017, Office of Personnel Management (OPM) report of investigation (ROI) at 6) In 2010, he married, and in 2013, he divorced. (Tr. 7-8) His son is a nine-year-old citizen of Iraq who resides in Jordan. (Tr. 8) In 2013, Applicant became a U.S. citizen, and in 2014, he received a U.S. passport. (SCA)

Financial Considerations

From 2011 to 2014, Applicant repaired six used cars damaged in accidents and then he sent them to Iraq where they were sold. (Tr. 85-87, 92) He received \$11,500 for one car and \$18,000 for another of the cars. (OPM ROI at 11) After paying expenses, he said he did not make a profit on the sale of the vehicles. (AE B) Some of the cars were used for a time by his relatives living in Iraq. (Tr. 83-84) He may have given one of the cars to his father, and then his father received the proceeds from the sale of this car. (Tr.

85-87) He did not declare any income from the sale of the cars on his federal or state tax returns. (Tr. 85-86) There was no evidence presented that contradicted his statement that he received no income or profit after paying expenses from the sale of the six cars.

In 2012 or 2013, Applicant sold a house in the United States for about \$260,000, and he made a profit of around \$100,000. (Tr. 80-82; OPM ROI at 11) In July 2017, he loaned \$90,000 to an uncle who lived in the United States to pay off his uncle's house. (Tr. 62; OPM ROI at 11) As of November 2017, his uncle had repaid \$37,000; however, the remainder was not repaid. (*Id.*; AE C at 1)

According to the Internal Revenue Service (IRS), the gain on the sale of a residence of up to \$250,000 is excluded from income for federal income tax purposes if "owned and used [by the taxpayer as his or her] main home for a period aggregating at least two years out of the five years prior to its date of sale." Internal Revenue Service website, *Topic No. 701 Sale of Your Home*, available at <https://www.irs.gov/taxtopics/tc701>. An information return is not required unless the seller receives an "income-reporting document such as Form 1099-S, Proceeds From Real Estate Transactions," or has a non-excludable gain. (*Id.*) Applicant used the profits from the sale of his residence for living expenses when he was unemployed or underemployed, and to purchase or repair the six cars that he hoped to sell for a profit in Iraq. (Tr. 83-87) The SOR did not allege that Applicant failed to disclose income on his tax returns. Applicant did not disclose the profit on the sale of his residence on his tax returns, and he was not asked to indicate how he qualified for the IRS homeowner's exclusion. It was clear from his overall testimony that he had very limited knowledge of IRS rules on exclusions from income and inclusions to income.

The SOR alleges in ¶¶ 1.a through 1.d that Applicant failed to timely file federal and state tax income returns for tax years 2010, 2011, 2012, 2014, 2015, and 2016. On November 7, 2017, Applicant told an OPM investigator that he did not file federal and state tax returns for tax years 2015 and 2016 because he did not make enough money to file. (OPM ROI at 10) The OPM ROI does not indicate how much income Applicant made in 2015 and 2016. (*Id.*)

When Applicant responded to DOHA interrogatories, he left the lines blank in the table for listing the filing dates for his state and federal income tax returns for tax years 2010, 2011, and 2012. (GE 2 at 2) He indicated that he filed his federal and state tax returns as follows: for tax year 2013 on April 14, 2014; for tax year 2014 on April 13, 2016 (one year late); for tax year 2015 and 2016, he said he did not make enough income to necessitate filing a tax return; for tax year 2017, he filed on March 3, 2018; and for tax year 2018 he filed on March 13, 2018. (GE 2 at 2-4) He did not indicate his income that he presumably reported on his state and federal income tax returns for tax year 2014.

Applicant provided some IRS tax transcripts. His IRS tax transcripts issued in March 2021 indicate: (1) His tax transcripts were unavailable for tax years 2010 through 2014; (2) For tax year 2015, his income was \$0, and no federal income tax return was filed; and (3) For tax year 2016, his income was \$11. (AE B)

Applicant said his federal and state tax returns for tax year 2010 were filed in March or April 2011. (Tr. 68-69) For tax year 2010, his Adjusted Gross Income (AGI) was \$5,799; his filing status was married filing jointly; and he received a \$1,601 refund. (SOR response at 38) His state tax return indicated he was supposed to receive an \$830 refund. (*Id.* at 40-41) The copies of his state and federal income tax returns that he provided are not signed or dated. (*Id.* at 38-46)

Applicant said his federal and state tax returns for tax year 2011 were timely filed. (Tr. 70-72) For tax year 2011, his AGI was \$11,152; his status was married filing separately or single; and he owed \$1,479 when he filed his tax return. (SOR response at 47-48) He said he paid the IRS with a check. (Tr. 69-72) His reported income from an auto body business was on an IRS Form 1099-MISC. (SOR response at 49-53) He received an \$811 refund from the state tax authority. (*Id.* at 63) The copies of his state and federal tax returns that he provided are not signed or dated. (*Id.* at 47-63)

For tax year 2012, his AGI was \$12,268; his status was married filing separately or single; and he owed \$1,742 when he filed his tax return. (SOR response at 68-69) He owed the state tax authority \$401 when he filed his state tax return. (*Id.* at 78-79) The copies of his state and federal tax returns he provided are not signed or dated. (*Id.* at 68-83) His federal income tax return was electronically accepted by the IRS on February 4, 2013. (*Id.* at 66) He paid his federal taxes when due. (Tr. 70-73)

For tax year 2013, Applicant's IRS federal income tax account transcript indicated his AGI was \$29,831; his status was single; and he owed \$4,206 when he filed his tax return. (GE 2 at 7) He paid the \$4,206 federal income tax debt when he filed his tax return. (*Id.*) The IRS received his payment on April 19, 2014. (*Id.*)

In November 2013, Applicant was in a serious vehicle accident. (Tr. 74-78) His shoulder was injured, and he was unable to work or was underemployed from 2014 to June 2016. (Tr. 76; SOR response at 4-36; OPM ROI at 5) His employment in auto sales for several years was limited because of lack of business. (Tr. 78)

In 2015 and 2016, the IRS income thresholds for the requirement to file a federal income tax return for a single person under age 65 were \$10,300 and \$10,350, respectively. See IRS Publication 501, *Exemptions, Standard Deduction, and Filing Information For use in preparing 2015 and 2016 Returns*, tbl. 1, pg. 2, available at <https://www.irs.gov/pub/irs-prior/p501--2015.pdf> and <https://www.irs.gov/pub/irs-prior/p501--2016.pdf>. In 2015 and 2016, the Applicant's income thresholds for the requirement to file a state tax return for a single person under age 65 was \$4,000 for both years. See 2015 and 2016 Individual Income Tax Forms and Instructions, MI-1040, at 3, available at https://www.michigan.gov/documents/taxes/1040_Book_with_forms_508951_7.pdf and https://www.michigan.gov/documents/taxes/MI-1040_Instruction_Book_-_Instruction_Only_545985_7.pdf.

For tax year 2017, Applicant's IRS federal income tax account transcript indicated his AGI was \$2,206; his status was single; and he received a \$5 refund after receiving a \$170 earned income credit. (GE 2 at 9) For tax year 2018, Applicant's IRS federal income

tax account transcript indicated his AGI was \$11,369; his status was single; and he received a \$265 refund after receiving a \$201 earned income credit. (*Id.* at 11)

On July 9, 2019, the state tax authority wrote that Applicant filed his state tax returns for tax years 2009-2013 and 2017-2018, and there were no outstanding liabilities. (GE 2 at 13) The state did not indicate when the state tax returns were filed.

In sum, Applicant admitted that he failed to timely file his federal and state income tax returns for tax year 2014. He filed these two tax returns on April 13, 2016 (one year late). Applicant denied that he had sufficient income in tax years 2015 and 2016 to require him to file state or federal income tax returns, and there was no evidence to contradict his statement.

Personal Conduct

SOR ¶ 3.a alleges that Applicant's August 2, 2017 SCA, in Section 26, "**Financial Record – Taxes**, asks "**In the past seven (7) years** have you failed to file or pay Federal, state, or other taxes when required by law or ordinance?" Applicant answered "no" and allegedly did not report his failure to timely file federal and state tax returns in tax years 2010, 2011, 2012, 2014, 2015, and/or 2016.

Applicant explained why he indicated "no" as follows:

I made a mistake actually back then because I thought -- I know, every year, like, I'm doing my taxes. That's what I know. Like, I'm doing it. Every year I go and file my taxes and do all the proper paperwork and pay the check and pay how much I owe. I get refund. That's all I know about. In 2015 and 2016, just before the economy was, like, not good here in, like, [Applicant's state of residency]. And the business is not really helped. So plus I was unemployed, like, most of the time from here to there. I don't know why I said no because I thought that I'm paying my taxes and then I . . . I don't know how to do it basically to be honest. I went to the IRS. And I requested the 2010, and I requested the taxes. But actually, they didn't give me or they didn't put me in a situation to pay it. Like, I'm willing to pay it if I can pay it right now if I owe any money. I'm not trying to hide anything. I thought this is the honest answer. I spoke my heart at that second when I answered the question. [Tr. 88-89]

Applicant indicated he did not think he had to file a tax return because of his lack of income in 2015 and 2016. (Tr. 87-89) In regard to preparation of tax returns, he went to a professional tax preparer, and he filed whatever he believed he was supposed to file. (Tr. 87-89) Applicant indicated he did the best he could to answer the question about filing tax returns honestly and in good faith. (Tr. 95)

Foreign Influence

The SOR alleges that Applicant had the following connections to Iraq and Jordan: in SOR ¶ 2.a, his son is a citizen of Iraq and a resident of Jordan; in SOR ¶¶ 2.b and 2.c, his brother and five sisters are citizens and residents of Iraq; in SOR ¶ 2.d, he has 14 foreign contacts or connections to persons who are citizens and residents of Iraq; in ¶ 2.e, as of September 2017, he provided about \$10,500 in financial support to his relatives in Iraq; and in SOR ¶ 2.f, he provides \$1,800 annually in financial support to his sister in Iraq.

Applicant was born in Iraq. (Tr. 23) He was educated through the technical school level in Iraq. He was in Iraq from September 2015 to April 2016 to assist his mother because she was ill, and she required two serious surgeries. (Tr. 63-65) He also went to Iraq to initiate the documents to enable his parents to leave Iraq to go to the United States. (Tr. 63-65) In February of 2017, he was in Iraq for about two weeks to bring his parents to the United States. (Tr. 63-64) He has not returned to Iraq since 2017. (Tr. 64) He does not intend to return to Iraq unless it is for employment as a linguist or to bring his siblings to the United States. (Tr. 66) He wants to bring all of his siblings to the United States. (Tr. 66)

Applicant has five sisters and one brother who are citizens and residents of Iraq. (Tr. 24) He has monthly contact with his brother. (Tr. 35) In 2016 or 2017, he sent \$1,800 to his sister, and she sent his brother \$600 out of the \$1,800. (Tr. 37, 43-44; OPM ROI at 7) From 2007 to 2009, Applicant's brother worked for the United States as a gate guard and linguist in Iraq. (Tr. 38-41) Applicant has monthly contact with his five sisters and four out of five of his brothers-in-law. (Tr. 45, 50-53) He ended his contacts with his father-in-law when he got divorced. (Tr. 53-54) His contacts with three aunts and two cousins has been reduced to annually or less frequently than annually. (Tr. 53-55) He has monthly contact with one friend and quarterly contact with another friend who are citizens and residents of Iraq. (Tr. 59, 61) He has reduced or ended his contacts for about two years or more with several friends who are citizens and residents of Iraq. (Tr. 59-60) The Iraqi government does not employ any of his siblings. (Tr. 35) There is no evidence the Iraqi government employs any of his contacts in Iraq.

Applicant's son lives in Jordan with his mother. (Tr. 45-46) She filed for divorce in Jordan in 2014. (Tr. 48) When Applicant went to Jordan in 2011 to visit his wife and son, he was delayed in Jordan until he paid a child support settlement of about \$1,500. (Tr. 48-50; OPM ROI at 7, 9) Under Jordanian law, he is not required to pay any more child support. (Tr. 50) He communicates with his son every three to four months. (Tr. 50) He is estranged from his former spouse, and he has not spoken to her since 2012. (Tr. 48-50; OPM ROI at 7)

Applicant had a friend in Iraq with a car dealership. (Tr. 57) Applicant ended his business relationship with him in 2017. (Tr. 57) Applicant sent him a one-time wire transaction for \$18,000 in connection with the car business. (Tr. 57)

On March 1, 2017, Applicant sponsored his parents to obtain a U.S. Visa; they moved from Iraq to the United States; and now they live with him. (Tr. 35; OPM ROI at 7) Applicant plans to help his parents apply for naturalization to become U.S. citizens in December 2021. (Tr. 20) His parents know that he has applied to be a linguist; however, they do not know anything else about his employment plans. (OPM ROI at 6) Applicant has not disclosed to family living in Iraq that he is seeking a security clearance. (Tr. 62-63) He acknowledged that if Iranian elements in Iraq learn of his support for the U.S. Government, his family living in Iraq is at risk of being harmed. (Tr. 62-63) He offered to renounce his Iraqi citizenship; however, he has never been asked to renounce it. (OPM ROI at 4)

In 2005, the U.S. Army recruited Applicant as a linguist. (Tr. 24-26) First he worked at a gate helping to screen persons seeking access to the base; then he worked with education and training of personnel involved in counterterrorism; and then from January 2007 to August 2008, he worked with U.S. Army Special Forces. (26-30) In August 2008, he immigrated to the United States. (Tr. 31)

In Iraq, Applicant's mission from January 2007 to August 2008 was to help to collect information from intelligence sources and then accompany the military to arrest criminals and terrorists. (Tr. 32) Applicant was in danger on missions up to three times a week. (Tr. 32) He was close to the detonation of three improvised explosive devices (IEDs) and one vehicle borne IED. (Tr. 33-34) His injuries during these incidents were minor, and he was able to resume his linguist duties after a short period of rest and recuperation. (Tr. 34)

On July 3, 2008, a Special Forces Assistant Detachment Commander (ADC) wrote that Applicant had been an interpreter for U.S. Army Special Operations Forces since January 2007. (AE A at 14) Applicant previously served with the U.S. Army for two years. (*Id.*) He "is available whenever he is needed, no matter what the hour or the mission calls for." He "is trustworthy and completely devoted to the success of the Coalition Forces in Iraq." The Special Forces ADC attested to the risks Applicant faced because of his contributions to the U.S. military, stating:

[He] has accompanied the team on at least 280 combat missions in hostile territory He has taken enemy fire with the team and has been part of an ODA convoy when it was struck by an IED. Besides the danger he faces in operations with the ODA, is the danger he faces when he returns home to [his] province. Many members of his community discourage cooperation with Coalition Forces, and would likely punish [Applicant] and his family severely if they found out about his work. . . . I would highly recommend [Applicant] receive an immigration Visa to protect his family from the harsh consequences that are sure to follow his cooperation with the United States. In my opinion he has earned his place among Americans, as he has risked his life to serve and protect them. (AE A at 14)

In 2008, another member of the Counter-Terror Coalition Forces in Iraq indicated Applicant completed "over 250 missions" and he described Applicant as "dedicated,

honest, and trustworthy – a tremendous asset.” He said: “Despite numerous threats to his personal and family safety, [Applicant] has remained steadfast in his support of the United States Armed Forces in Iraq, working long hours, maintaining an unpredictable schedule, and volunteering to support the SFODA’s most sensitive missions.” (AE A at 13)

In 2010, an Army lieutenant colonel, who is a battalion commander in an Army combat division, praised Applicant for his reliability, professionalism, and contributions to training his unit before their deployment. (AE A at 15) Applicant received 12 certificates and letters of appreciation from various Army units. (AE A at 16-27)

Iraq

The Federal Republic of Iraq (Iraq) is a constitutional parliamentary republic. Iraq’s 2018 parliamentary elections generally met international standards of free and fair elections and led to the peaceful transition of power from Prime Minister Haider al-Abadi to Adil Abd al-Mahdi. On December 1, 2019, in response to protesters’ demands for significant changes to the political system, Abd al-Mahdi submitted his resignation, which the Iraqi Council of Representatives (COR) accepted. Prime Minister Abd al-Mahdi has continued to serve in a caretaker capacity while the COR works to identify a replacement in accordance with the Iraqi constitution.

The U.S. Department of State (DOS) travel advisory for Iraq is Level 4: Do not travel to Iraq due to terrorism, kidnapping, armed conflict, the Global Health Advisory, and Iraq’s limited capacity to provide support to U.S. citizens. U.S. citizens in Iraq are at high risk for violence and kidnapping. Numerous terrorist and insurgent groups are active in Iraq and regularly attack both Iraqi security forces and civilians. Anti-U.S. sectarian militias threaten U.S. citizens and Western companies throughout Iraq. Attacks by IEDs occur in many areas of the country, including Baghdad.

On May 15, 2019, the DOS ordered the departure of non-emergency U.S. Government employees from the U.S. Embassy in Baghdad because of heightened tension with Iran. On September 24, 2019, the U.S. Embassy in Baghdad again reported heightened tensions, noting that attacks in major cities may occur without warning and reiterating the DOS guidance to not travel to Iraq.

Beginning in early October 2019, the country experienced large-scale protests in Baghdad and several Shia-majority governorates. Demonstrators gathered in the streets to reinforce their demands for an end to corruption and a restructuring of the government. Civilian authorities quickly lost control of the situation. Security and armed groups, including Popular Mobilization Forces (PMF), responded with live ammunition, tear gas canisters shot as projectiles, and concussion grenades, in an attempt to suppress the demonstrations. By official accounts, as of December 17, 2019, more than 479 civilians were killed and at least 20,000 were injured.

On December 27, 2019, a rocket attack on a base near Kirkuk in northern Iraq killed a U.S. contractor and wounded four U.S. and two Iraqi servicemembers. Two days

later, the United States launched retaliatory airstrikes on five facilities (three in Iraq) used by the Iran-backed Iraqi armed group Kata'ib Hezbollah (KH), to which the United States attributed the December 27 attack and other attacks. On December 31, 2019, supporters of KH and other Iran-backed Iraqi militias surrounded the U.S. Embassy in Baghdad, forcing their way into the compound and setting some outer buildings on fire. Iraqi officials and security forces reestablished order outside the embassy, but tensions remained high, with KH supporters and other pro-Iran figures threatening further action and vowing to expel the United States from Iraq by force if necessary.

On January 2, 2020, the U.S. Department of Defense announced that the U.S. military had killed the Islamic Revolutionary Guards Corps-Qods Force (IRGC-QF) Commander, Major General Qasem Soleimani, in a defensive action. The statement cited Soleimani's responsibility for the deaths of hundreds of Americans and coalition servicemembers and his approval of the embassy blockade in Baghdad, and asserted that he was actively developing plans to attack American diplomats and servicemembers in Iraq and throughout the region. According to subsequent media reports and United States statements, Soleimani was killed in a U.S. drone strike while leaving Baghdad International Airport early on the morning of January 3, 2020. In response, Prime Minister Adel Abd al Mahdi and President Barham Salih condemned the strike as a violation of Iraqi sovereignty. On January 3, 2020, the U.S. Embassy issued an alert that cited heightened tensions in Iraq and the region and urged American citizens to depart Iraq immediately. On March 26, 2020, due to a combination of security conditions and restricted travel options as a result of the global COVID-19 pandemic, the DOS ordered the departure of designated U.S. Government employees at the U.S. Embassy in Baghdad and associated offices elsewhere in Iraq.

The Islamic State in Iraq and Syria (ISIS) is a designated terrorist organization conducting an active insurgency in Syria, with direct links to terrorist groups in Iraq and other parts of the world. It commits terrorist attacks, violent atrocities, and targets U.S. citizens. The Iraqi government declared all of its territory liberated from ISIS in December 2017; however, despite improved government control, ISIS remains a threat to public safety in Iraq through the indiscriminate use of terrorist and asymmetrical attacks.

In January 2019, the U.S. Director of National Intelligence (DNI), delivered the Worldwide Threat Assessment of the U.S. Intelligence Community. In his Statement for the Record, the DNI provided the following assessment of the situation in Iraq: ISIS still commands thousands of fighters in Iraq and Syria, and it maintains eight branches, more than a dozen networks, and thousands of dispersed supporters around the world, despite significant leadership and territorial losses. ISIS very likely will continue to pursue external attacks from Iraq and Syria against regional and Western adversaries, including the United States. In Iraq, Iran-supported Popular Mobilization Committee (PMF)-affiliated Shia militias remain the primary threat to U.S. personnel, and the DNI expected that threat to increase as the threat ISIS poses to the militias recedes, Iraqi Government formation concludes, some Iran-backed groups call for the United States to withdraw, and tension between Iran and the United States grows. The DNI continued to watch for signs that the Iranian regime might direct its proxies and partners in Iraq to attack US interests. Iraq is facing an increasingly disenfranchised public. The underlying political and economic factors

that facilitated the rise of ISIS persist, and Iraqi Shia militias' attempts to further entrench their role in the state increase the threat to US personnel. Iraqi Shia militants conducted several attacks against US diplomatic facilities in Iraq in September and December 2018.

There is a serious risk from terrorism in Baghdad and Basra. ISIS fighters have gone underground and formed cells that still pose a danger throughout Iraq. These cells will continue with their attempts to carry out high-profile attacks on Iraqi Security Force personnel, government installations, and other soft targets in major population centers. Iranian-backed Shia militias have previously targeted U.S. interests in Iraq. There are reports of Shia militia groups kidnapping locals, foreign workers, and members of international organizations and demanding ransoms from either their families or their employers. A number of militia groups remain hostile to U.S. interests and continue to pose a considerable potential threat, as either organized groups or individually as rogue elements that may take independent action.

According to the United Nations, ISIS has killed more than 3,000 civilians and injured more than 4,600 people since 2017. In its 2019 Human Rights Report, the U.S. DOS noted that Iraq's most significant human rights issues included: reports of unlawful or arbitrary killings, including extra-judicial killings; forced disappearances; torture; arbitrary detention; harsh and life-threatening prison and detention center conditions; arbitrary or unlawful interference with privacy; the worst forms of restrictions on free expression, the press, and the internet, including violence against journalists, censorship, site blocking, and criminal libel; significant interference with the rights of peaceful assembly; legal restrictions on freedom of movement of women; threats of violence against internally displaced persons (IDPs) and returnee populations perceived to have been affiliated with ISIS; and widespread official corruption.

Iraq's government, including the Office of the Prime Minister, investigated allegations of abuses and atrocities perpetrated by the Iraqi Security Forces, including an investigation of the October protests, but the Iraqi government rarely punished those responsible for perpetrating or authorizing human rights abuses. Moreover, despite a reduction in numbers, ISIS continued to commit serious abuses and atrocities, including killings through suicide bombings and IEDs. Some allegations of ISIS abuses and atrocities were prosecuted, including suspected ISIS members under the 2005 counterterrorism law.

The 2015 Visa Waiver Program Improvement and Terrorist Travel Protection Act of 2015 makes citizens of Iraq ineligible to travel or be admitted to the United States under the Visa Waiver Program. This exclusion reflects the determination of the Secretary of Homeland Security that Iraqi citizens are more likely to be a credible threat to the national security of the United States; and that a foreign terrorist organization has a significant presence in Iraq; or that Iraq is a safe haven for terrorists.

The U.S. Mission in Iraq is dedicated to our enduring strategic partnership with the Government of Iraq and the Iraqi people. In coordination with the Global Coalition to Defeat ISIS, the United States assisted Iraq's efforts to achieve the December 2017 milestone of liberating the country from ISIS. Following the territorial defeat of ISIS in Iraq,

the United States increased efforts to stabilize liberated areas as Iraq continues to develop as a sovereign, stable, and self-reliant country. Iraq is now a key partner for the United States in the region as well as a voice of moderation and democracy in the Middle East. Iraq benefits from functioning government institutions, including an active legislature, and plays an increasingly constructive role in the region. The United States maintains vigorous and broad engagement with Iraq on diplomatic, political, economic, and security issues in accordance with the U.S.-Iraq Strategic Framework Agreement (SFA). The SFA between Iraq and the United States provides the foundation for the U.S.-Iraq bilateral relationship. Covering a wide range of bilateral issues, including political relations and diplomacy, defense and security, trade and finance, energy, judicial and law enforcement issues, services, science, culture, education, and environment, it emphasizes the important relationship and common goals the two countries share. Efforts to implement the SFA are overseen by the Higher Coordinating Committee and several Joint Coordination Committees.

U.S. bilateral assistance to Iraq focuses on economic reform, assistance to vulnerable groups, and democracy and governance. The U.S. continues to help strengthen the capacity of Iraq's civil society organizations and elected representatives. U.S. bilateral assistance aims not only to bolster Iraq's democratic institutions, but also to preserve the strategic, political, and economic importance of the U.S.-Iraq partnership in a changing Middle East region. Since 2014, the United States has contributed billions of dollars in humanitarian, demining, and stabilization aid to conflict-affected and displaced Iraqis in the region, including support for communities recovering from genocide.

Jordan

The Hashemite Kingdom of Jordan (Jordan) is a constitutional monarchy ruled by King Abdullah II bin Hussein. In 2013 and 2014, the U.S. provided Jordan \$2.25 billion in loan guarantees, allowing Jordan access to affordable financing from international capital markets. The U.S.-Jordan free trade agreement (FTA), the U.S.'s first FTA with an Arab country, has expanded the trade relationship by reducing barriers for services, providing cutting-edge protection for intellectual property, ensuring regulatory transparency, and requiring effective labor and environmental enforcement. The United States and Jordan have an "open skies" civil aviation agreement; a bilateral investment treaty; a science and technology cooperation agreement; and a memorandum of understanding on nuclear energy cooperation. Such agreements bolster efforts to help diversify Jordan's economy and promote growth. Jordan and the United States belong to a number of the same international organizations, including the United Nations, International Monetary Fund, World Bank, and World Trade Organization. Jordan also is a Partner for Cooperation with the Organization for Security and Cooperation in Europe.

The U.S. DOS assesses the threat of terrorism in Jordan as high; with the capital of Amman currently assessed as a high-threat location for terrorist activity directed at or affecting official U.S. Government interests. Transnational and indigenous terrorist groups in Jordan have demonstrated the capability to plan and implement attacks. Violent extremist groups in Syria and Iraq, including the Islamic State of Iraq and the Levant (ISIL) (also known as the Islamic State of Iraq and Syria, or ISIS) and Jabhat al-Nusra, have

conducted attacks in Jordan and continue to plot against local security forces, U.S. and Western interests, and soft targets such as high-profile public events, hotels, places of worship, restaurants, schools, and malls. Jordan's prominent role in the effort to defeat ISIS, and its shared borders with Iraq and Syria, increase the potential for future terrorist incidents.

Although Jordan remained a committed partner on counterterrorism and countering violent extremism in 2016, numerous terrorist incidents reflect the current security situation in Jordan: throughout 2017, multiple vehicle-borne improvised explosive devices detonated in and around a refugee camp in Syria near the Jordanian border; and in October 2017, two homemade explosive devices were found in another refugee camp in Jordan. Also in October 2017, the State Security Court (SSC) prosecuted six people for sympathizing with ISIS, after they created social media accounts to recruit Jordanian supporters for ISIS and promoted terrorist activity. In September 2017, the SSC charged 16 people with a terrorist plot involving the use of automatic weapons to carry out terrorist attacks against public security services; and the Jordanian General Intelligence Directorate arrested a 10-person ISIS cell that was planning to attack security forces and tourist locations using explosive suicide belts. Throughout 2017, there were numerous instances of extremists posting pro-ISIS videos or statements on social media.

U.S. involvement in Iraq and Syria and the U.S. Government's policies on Israel, have fueled anti-American feelings in Jordan. Recent surveys reflect that over 80% of the Jordanian population has an unfavorable view of the U.S. Government. The U.S. DOS has assessed Amman as being a high-threat location for political violence directed at or affecting official U.S. Government interests. In December 2017, protests took place at the U.S. Embassy for 27 days after the announcement that the U.S. Embassy in Tel Aviv would move to Jerusalem.

As a regional leader in the Global Coalition to Defeat ISIS, Jordan played an important role in Coalition successes in degrading the terrorist group's territorial control and operational reach. During 2016, Jordanian authorities took legal action against numerous individuals accused of terrorism under Jordanian law. On July 13, 2016, the Jordanian State Security Court filed charges against 21 suspected ISIS affiliates in connection with the pre-emptive March raid on an alleged ISIS safe house in Irbid. The DOS assesses that the potential for terrorist activity is heightened as Jordan participates in the coalition against ISIS. Extremist groups have carried out terrorist activities against U.S. and Jordanian government targets in Jordan. Terrorist groups often do not distinguish between U.S. Government personnel and private U.S. citizens, and may target areas frequented by Westerners, such as tourist sites, hotels, restaurants, shopping malls, and transportation hubs.

According to the DOS 2017 Human Rights Report, Jordan's most significant continuing human rights problems include allegations of torture by security and government officials; arbitrary arrest and detention, including of activists and journalists; infringements on privacy rights; restrictions on freedom of expression; and restrictions on freedom of association and assembly. Impunity remained widespread, and the

government did not take sufficiently strong steps to investigate, prosecute, or punish officials who committed abuses.

The Jordanian SSC took legal action against numerous individuals deemed to be terrorists under local law, including the arrest and prosecution of men accused of seeking to join Al-Nusra Front (ANF) and ISIS. Other arrests and prosecutions involved supporting/recruiting for ISIS and attempted travel to/from Syria in support of extremist activities and also for “propagating ISIL ideology,” a charge often used for online activity.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no 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 applicant’s 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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, these guidelines are applied 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, 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 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 “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 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). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant’s self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive

presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 includes one disqualifying condition that could raise a security concern and may be disqualifying in this case: "(f) failure to file . . . annual Federal, state, or local income tax returns . . . as required." The record establishes AG ¶ 19(f).

One financial considerations mitigating condition under AG ¶ 20 is potentially applicable in this case: "(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."

The DOHA Appeal Board explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant timely filed all tax returns except for tax year 2014. He said he filed his federal and state income tax returns for tax year 2014 on April 13, 2016 (one year late). He did not indicate his income on these tax returns for tax year 2014. On August 2, 2017, he completed his SCA. On November 7, 2017, he completed his OPM PSI. On October 29, 2019, the SOR was issued. All tax returns were filed before he submitted his SCA. Applicant was generally unfamiliar with tax issues, and may not have needed to file a federal tax return in 2014 because he might not have met the IRS income threshold. Moreover, he did not repeat the late filing of his tax returns after 2016. See ISCR Case No. 19-01643 at 4-7 (App. Bd. Mar. 17, 2021) (Duffy, A.J., dissenting) (explaining that failure to timely file tax returns is not an automatic disqualifying circumstance, and it may be mitigated depending on its recency and other reasons). There is no evidence that he violated any tax-filing requirements since April 13, 2016.

Applicant's character evidence shows that he has good judgment, is reliable, professional, and responsible. Tax filing timeliness errors for a single tax year, when his overdue tax returns were filed in 2016, are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) applies. Under all the circumstances, he established mitigation of financial considerations security concerns.

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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. . . .

AG ¶ 16 lists one condition that could raise a security concern and may be disqualifying in this case:

(a) deliberate 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.

Applicant did not disclose on his August 2, 2017 SCA that he failed to timely file his federal and state income tax returns for tax year 2014 until April 13, 2016. The Appeal Board has explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)). Applicant has an unsophisticated level of understanding about finances and taxes and the English language. He did not carefully consider the question about timely filing tax returns on his August 2, 2017 SCA. He merely concluded that he was filing his tax returns and paying his taxes without considering year-by-year for the previous seven years when he filed his tax returns. When a DOHA interrogatory asked about filing his tax returns year-by-year, he disclosed the late filing of his 2014 tax return. His erroneous answer on his August 2, 2017 SCA was a mistake caused by his unfamiliarity with the careful consideration required when completing security documents relating to taxes. Applicant's statements at his hearing were credible. He refuted the allegation that he intentionally falsified his SCA with intent to deceive. Personal conduct security concerns are refuted.

Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

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.

AG ¶ 7 lists conditions that could raise a security concern and may be disqualifying 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.

Applicant has the following Middle East connections: (1) his son is a citizen of Iraq and a resident of Jordan; (2) his brother and five sisters are citizens and residents of Iraq; (3) he has close ongoing connections with about 14 persons who are citizens and residents of Iraq, including four brothers-in-law; and (4) he provided financial support to his relatives in Iraq.

When an allegation under a disqualifying condition is established, “the Directive presumes there is a nexus or rational connection between proven conduct or circumstances . . . and an applicant’s security eligibility. Direct or objective evidence of nexus is not required.” ISCR Case No. 17-00507 at 2 (App. Bd. June 13, 2018) (citing ISCR Case No. 15-08385 at 4 (App. Bd. May 23, 2018)).

The mere possession of close family ties with people living in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if an applicant, his or her spouse, or someone sharing living quarters with them, has such a relationship with even one person living in a foreign country, this 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. 08-02864 at 4-5 (App. Bd. Dec. 29, 2009) (discussing problematic visits of that applicant's father to Iran).

There is a rebuttable presumption that a person has ties of affection for, or obligation to, his or her immediate family members, and this presumption includes in-laws. ISCR Case No. 07-06030 at 3 (App. Bd. June 19, 2008); ISCR Case No. 05-00939 at 4 (App. Bd. Oct. 3, 2007) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)).

The DOHA Appeal Board has indicated for Guideline B cases, "the nature of the foreign government involved and the intelligence-gathering history of that government are among the important considerations that provide context for the other record evidence and must be brought to bear on the Judge's ultimate conclusions in the case. The country's human rights record is another important consideration." ISCR Case No. 16-02435 at 3 (May 15, 2018) (citing ISCR Case No. 15-00528 at 3 (App. Bd. Mar. 13, 2017)). Another important consideration is the nature of a nation's government's relationship with the United States. These factors are relevant in assessing the likelihood that an applicant's family members living in that country are vulnerable to government coercion or inducement.

The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, the government ignores the rule of law including widely accepted civil liberties, a family member is associated with or dependent upon the government, the government is engaged in a counterinsurgency, terrorism causes a substantial amount of death or property damage, or the country is known to conduct intelligence collection operations against the United States. The relationships of Iraq and Jordan with the United States and the situations involving terrorists and insurgents in those two countries place a significant burden of persuasion on Applicant to demonstrate that his relationships with any family member or friend living in or visiting them do not pose a security risk because of the risks due to terrorists in those two countries. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and concerns about assisting someone living in or visiting Iraq or Jordan.

The Appeal Board in ISCR Case No. 03-24933, 2005 DOHA LEXIS 346 at *20-*21 n. 18 (App. Bd. July 28, 2005), explained how relatives in a foreign country have a security significance:

The issue under Guideline B is not whether an applicant's immediate family members in a foreign country are of interest to a foreign power based on their prominence or personal situation. Rather, the issue is whether an applicant's ties and contacts with immediate family members in a foreign

country raise security concerns because those ties and contacts create a potential vulnerability that a foreign power, [criminals, or terrorists] could seek to exploit in an effort to get unauthorized access to U.S. classified information that an applicant -- not the applicant's immediate family members -- has by virtue of a security clearance. A person may be vulnerable to influence or pressure exerted on, or through, the person's immediate family members -- regardless of whether the person's family members are prominent or not.

Guideline B security or trustworthiness concerns are 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, 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. See ISCR Case No. 02-22461, 2005 DOHA LEXIS 1570 at *11-*12 (App. Bd. Oct. 27, 2005) (citing ISCR Case No. 02-26976 at 5-6 (App. Bd. Oct. 22, 2004)) (discussing Taiwan).

While there is no evidence that intelligence operatives, criminals, or terrorists from or in Iraq or Jordan seek or have sought classified or economic information from or through Applicant, his family, or contacts, nevertheless, it is not prudent to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Iraq and Jordan have a significant problem with terrorism and crime. Applicant's family or contacts in those countries "could be a means through which Applicant comes to the attention of those who seek U.S. information or technology and who would attempt to exert coercion upon him." ADP Case No. 14-01655 at 3 (App. Bd. Dec. 9, 2015) (citing ISCR Case No. 14-02950 at 3 (App. Bd. May 14, 2015)).

Applicant's relationships with people who are living in Iraq or Jordan or visiting those countries create a potential conflict of interest because terrorists could place pressure on people in those countries in an effort to cause Applicant to compromise classified information. Those relationships create "a heightened risk of foreign inducement, manipulation, pressure, or coercion" under AG ¶ 7. Department Counsel produced substantial evidence of Applicant's relationships with people living in those two countries and financial connections to persons in Iraq and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), and 7(f) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; 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.

As indicated in the disqualifying conditions Foreign Influence section, *supra*, Applicant has several relatives and contacts who are citizens and residents of Iraq or Jordan. He has frequent contacts with about 14 of them. His son is a citizen of Iraq and a resident of Jordan. As recently as 2017, he provided financial support to his brother and sister who are citizens and residents of Iraq. Applicant's assistance to the United States as a linguist will place his family living in Iraq and Jordan in danger if terrorists learn of this assistance.

Applicant's SOR does not allege: (1) Applicant's parents live with him, and they likely have frequent contacts with and affection for their children and others living in Iraq; (2) Applicant traveled to Iraq to assist family as recently as 2017; and (3) Applicant sent six cars to Iraq as recently as 2014, which were sold in Iraq. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered, stating:

(a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation;

(d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See also ISCR Case No. 12-09719 at 3 (App. Bd. Apr. 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). The non-SOR allegations will not be considered except for the five purposes listed above.

The Appeal Board has concluded that contact every two months or three months constitutes "frequent contact" under AG ¶¶ 7 and 8. ISCR Case No. 14-05986 at 3-4 (App. Bd. Oct. 14, 2016). See also ISCR Case No. 04-09541 at 2-3 (App. Bd. Sept. 26, 2006) (finding contacts with applicant's siblings once every four or five months not casual and infrequent and stating "The frequency with which Applicant speaks to his family members in Iran does not diminish the strength of his family ties."). Applicant has frequent contact with about 14 relatives and others who are citizens and residents of Iraq. He also has affection for his son, who is an Iraqi citizen living in Jordan.

A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has significant connections to the United States. Applicant is a citizen of the United States, and his parents live in the United States.

Applicant's support to the DOD in Iraq, including the dangers that service entailed, weighs heavily towards mitigation of security concerns. Applicant seeks a security clearance to enable him to continue providing assistance to DOD as a linguist. He has shown his patriotism, loyalty, and fidelity to the United States during his support to DOD while serving in Iraq. In ISCR Case No. 17-00629 at 4 (App. Bd. May 24, 2018), the Appeal Board explained the relevance of such service on behalf of the United States:

Such evidence demonstrates that Applicant has repeatedly been willing to assume a high level of risk on behalf of the U.S. and shows his ties and sense of obligation to the U.S. could be sufficiently strong enough to support a favorable application of mitigating condition 8(b). See ISCR Case No. 05-03846 at 6 (App. Bd. Nov 14, 2006) (An applicant's work in support of U.S. forces in Afghanistan occurred "in the context of dangerous high-risk circumstances in which [he] made a significant contribution to national security.") See also ISCR Case No. 04-12363 at 2 (App. Bd. Jul. 14, 2006); ISCR Case No. 07-00034 at 2-3 (App. Bd. Feb. 5, 2008); and ISCR Case No. 10-02803 at 6 (App. Bd. Mar. 19, 2012).

It is important to be mindful of the United States' huge historical investment of manpower and money in Iraq. Applicant's support to DOD contributes to the

accomplishment of DOD's goals and missions in Iraq. In addition, Iraq is a key U.S. ally in combatting terrorism, and Iraq has been a leading recipient of U.S. assistance, receiving billions of dollars in aid and military reimbursements since 2014.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with relatives who are citizens and residents of Iraq and Jordan. Applicant has close relationships with family and other contacts in those countries, and they are at risk from criminals, terrorists, and human rights violations of the Iraqi and Jordanian governments. Applicant's access to classified information could add significant risk to his relatives and contacts living in those countries. Many linguists in Iraq also have family in Iraq, and their families in Iraq have the same risk of injury or death as Applicant's siblings, in-laws, and other contacts. Being raised in Iraq adds to their understanding of Iraqi culture and increases their ability to communicate with Iraqis. An extensive background in Iraq can result in a more effective linguist and increase the linguist's contributions to U.S. mission accomplishment and national security.

In sum, Applicant's connections to his relatives and contacts residing in Iraq and Jordan are significant; however, he supported the United States as a linguist in Iraq from about January 2005 to August 2008. He went on more than 280 combat missions and was repeatedly exposed to injury or death. In August 2008, he immigrated to the United States. His connections to the United States, and support to the United States in a combat environment, taken together, are sufficient to overcome the foreign influence security concerns under Guideline B.

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 the 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), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guidelines F, E, and B are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is a 44-year-old Iraqi and United States dual citizen who seeks employment as a linguist. In 1995, he graduated from high school, and in 1998, he graduated from a technical institute in Iraq. From about January 2005 to August 2008, he served as a linguist with U.S. Forces in Iraq. From 2009 to 2010, he worked as a part-time role player and linguist for the U.S. Army in the United States. In 2010, he married, and in 2013, he divorced. His nine-year-old son is a citizen of Iraq who resides in Jordan.

The evidence against grant of a security clearance is substantial. Applicant filed his federal and state income tax returns for tax year 2014 one year late in 2016. He has about 14 relatives and contacts in Iraq, and he has frequent contacts with them. He has given financial support to his siblings in Iraq as recently as 2017. He traveled to Iraq to help family members as recently as 2017. His parents live with him, and they are citizens of Iraq and likely have frequent contacts with family and others in Iraq. He shipped six cars to Iraq as recently as 2014 for sale in Iraq.

A Guideline B decision concerning Iraq and Jordan must take into consideration the geopolitical situation and dangers in these two countries. See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion). Those countries are dangerous places because of violence from terrorists, and their governments do not respect the full spectrum of human rights. Terrorists continue to threaten the Iraq and Jordan governments, the interests of the United States, U.S. Armed Forces, and those who cooperate and assist the United States. The United States, Iraq, and Jordan are allies in the war on terrorism.

The evidence mitigating security concerns is more persuasive than the evidence against mitigation. Applicant served as a linguist in Iraq and went on at least 280 combat missions with special operations forces. He made contributions to U.S. national security at personal risk on behalf of U.S. combat forces in Iraq. All these circumstances increase the probability that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group to coerce or exploit him. See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008). His past honorable service in Iraq weighs heavily towards mitigation of foreign influence security concerns. See ISCR Case No. 07-00034 at 3 (App. Bd. Feb. 5, 2008) (affirming grant of security clearance and commenting “Applicant has served as a translator and as a cultural liaison between Americans and Afghan citizens, diffusing tensions and facilitating transactions between the two groups. . . . Applicant put his life in danger on at least one occasion to protect American lives and interests in Afghanistan.”).

A member of the Counter-Terror Coalition Forces in Iraq described Applicant as “dedicated, honest, and trustworthy – a tremendous asset.” He said: “Despite numerous threats to his personal and family safety, [Applicant] has remained steadfast in his support of the United States Armed Forces in Iraq, working long hours, maintaining an unpredictable schedule, and volunteering to support the SFODA’s most sensitive missions.” (AE A at 13) An Army lieutenant colonel lauded Applicant for his reliability, professionalism, and contributions to training his unit before their deployment. Applicant received 12 certificates and letters of appreciation from various Army units.

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. I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Applicant mitigated financial considerations and foreign influence security concerns, and he refuted personal conduct 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 F:	FOR APPLICANT
Subparagraphs 1.a through 1.e:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a through 2.f:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

Conclusion

In light of all of the circumstances in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Mark Harvey
Administrative Judge