



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [Redacted]) ISCR Case No. 19-02327
)
 Applicant for Security Clearance)

Appearances

For Government: Eric C. Price, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

05/05/2021

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines B (Foreign Influence) and C (Foreign Preference). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 5, 2017, and a second SCA on June 6, 2017. On September 25, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines B and C. 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 October 31, 2019, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 8, 2020, and the case was assigned to me on June 23, 2020. On June 24, 2020, the Defense Office of

Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for July 29, 2020. On July 1, 2020, the hearing was cancelled because Applicant was quarantined overseas due to the COVID-19 pandemic. On March 3, 2021, DOHA notified Applicant that the hearing was rescheduled for March 16, 2021. I convened the hearing as rescheduled. Government Exhibits (GX) 1 through 8 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) F through R, which were admitted without objection. AX A through E had been previously submitted with Applicant's answer to the SOR and were admitted without objection at the hearing. I kept the record open until April 16, 2021, to enable Applicant to submit additional documentary evidence. He timely submitted AX R through CC, which were admitted without objection. I marked his supplemental AX R as AX DD to avoid having two exhibits labeled AX R. DOHA received the transcript (Tr.) on March 31, 2021.

Amendment of SOR

At the hearing, Department Counsel moved to amend the SOR to add SOR ¶ 1.j, alleging that Applicant's wife is a citizen of Iraq and a resident of Jordan. I granted the motion to amend the SOR, with no objection by Applicant.

Administrative Notice

At the hearing, Department Counsel requested that I take administrative notice of relevant facts about Iraq, Jordan, and the United Arab Emirates (UAE) (Hearing Exhibits (HX) I, II, and III). After the hearing, Department Counsel submitted additional official documents supporting the requests for administrative notice (HX IV, V, and VI). I took administrative notice as requested by Department Counsel. I have also taken administrative notice of Executive Order (EO) 13769 dated January 27, 2017; EO Order 13780 dated March 6, 2017; and the National Security Memorandum, *Memorandum on Revitalizing America's Foreign Policy and National Security Workforce, Institutions, and Partnerships*, dated February 4, 2021, submitted by Applicant as AX AA, BB, and CC. The facts administratively noticed are set out below in my findings of fact.

Findings of Fact

In Applicant's answer to the SOR, he admitted SOR ¶ 1.c in part, admitted SOR ¶¶ 1.d-1.f, admitted SOR ¶¶ 1.h and 1.i in part, admitted SOR ¶ 2.a with an explanation, and denied SOR ¶¶ 1.a, 1.b, and 1.g. His admissions in his answer and at the hearing are incorporated in my findings of fact.

From October 2006 to April 2017, Applicant was a partner and the chief operating officer of a company in Jordan, importing and selling goods in Jordan. The company was not profitable, and he left it in April 2017 and began working for his current employer. (GX 2 at 14-15.) Since May 2017, he has been employed by a defense contractor as a linguist in support of a U.S. Marine Corps team in Jordan. He has received numerous unit patches, challenge coins, and a letter of appreciation from the team leader, a Marine Corps lieutenant colonel. (AX Y.) He has never held a security clearance. (Tr. 14.)

From May 2005 to March 2017, Applicant resided in Jordan in an apartment that he owned jointly with his daughter. He gave his interest in the apartment to his daughter, who is now the sole owner. She is now living in the United States. (GX 3.) His daughter has no plans to return to Jordan. She intends to stay in the United States, graduate from college, and attend medical school. (Tr. 55.)

Applicant and his aunt jointly own a home in the United States. They received the home as a gift from Applicant's father in June 2015. In his SCA, Applicant listed the home as his permanent residence since March 2017. His aunt and his daughter currently live in his U.S. home. (Tr. 47-48; AX L.)

While Applicant previously resided in Jordan, he employed a live-in housekeeper who was a citizen of Indonesia with a work permit in Jordan. He hired his housekeeper through a local agency. She stopped working for Applicant about a year ago. (Tr. 20) Although Applicant has returned to Jordan, he does not employ a housekeeper.

Applicant was born in Iraq, but he is a U.S. citizen by birth. (AX P.) His mother is a native-born citizen of the United States and is a dual citizen of the United States and the United Kingdom. His mother resides in the United States but spends summers in the United Kingdom. (GX 8 at 11.) Applicant acquired Iraqi citizenship by virtue of his birth in Iraq and the Iraqi citizenship of his father. His father was born in Iraq and is now a citizen of the United Kingdom. His parents met while his father was attending a university in the United States. After they married in July 1961, they lived in Iraq, where Applicant's father and grandfather owned and operated an aluminum factory, and Applicant's mother worked for the American Embassy in Bagdad. His parents then moved to the United Kingdom, where Applicant attended a boarding school and high school. Applicant attended some college in the United States but completed his college education in the United Kingdom. He obtained a bachelor's degree from American International University, located in the United Kingdom, in July 1989. He was a dual citizen of the United States and Iraq until he renounced his Iraqi citizenship in July 1997. (GX 8 at 10.)

Applicant's brother is a dual citizen of the United States and the United Kingdom. He lives and works in the United States. Applicant's sister is a dual citizen and resident of the United States and the United Kingdom. She lives and works in the United Kingdom. (GX 2 at 23-26.)

After graduating from college, Applicant worked for his father in a construction and land-development business. At some time in 1997, he returned to Iraq to work for his father. While in Iraq, he met his first wife, a citizen and resident of Iraq. They married in November 1997 in Iraq. Their only child was born in April 2001. Applicant's wife was employed by the United Nations and was assigned to work in Jordan in 2003. (GX 6 at 5.) Applicant remained in Iraq, working as a liaison officer and coordinator for the United States Agency for International Development (USAID), until he moved to Jordan in 2004, when his wife became ill. (Answer to SOR at 6.) His wife passed away in June 2005. (AX R.) He has not been in Iraq since 2010. (Tr. 28.)

Applicant testified that he remarried in December 2019. (Tr. 22.) However, when he updated his personal information with his employer in February 2019, he informed his supervisor that he married in December 2018, not 2019. He also reported that his wife holds a bachelor's degree in microbiology, and a master's degree in business administration, and that she was working at the United Nations Educational, Scientific, and Cultural Organization (UNESCO) in Amman, Jordan. (AX V.) Applicant and his wife currently live in his daughter's apartment in Jordan. (Tr. 41.)

Applicant sponsored his wife for a spouse's green card. (Tr. 38.) She submitted her application in July 2019. Her application reflects that she is 32 years old; that she is a native of Iraq; that her city and country of last residence is Amman, Jordan; that her occupation is business, management, and marketing; and her address in the United States is Applicant's home in the United States. (AX T.) She received her spouse visa in October 2019. (AX DD at 1.) She has a permanent resident card reflecting her residence in the United States since November 2019. (AX DD at 2.) She also holds a U.S. Social Security Card. (AX S.) Applicant testified that his wife has applied for U.S. citizenship, but he submitted no documentation reflecting a citizenship application. (Tr. 76-77.)

Applicant's wife had been employed by UNESCO as a human resources specialist for six or seven years when they met, but she is no longer employed outside the home. (Tr. 37-38.) They knew each other for about a year before they married. (Tr. 36.) Before Applicant's wife moved to Jordan, she lived in the UAE and was involved in a real estate business.

Applicant's wife's father is deceased. Her mother was a teacher in a private school in Iraq and is now retired. Her uncle is a shopkeeper in Iraq. The record does not reflect whether she has siblings. (Tr. 38-39.)

Applicant's father owns a one-fourth share of an aluminum factory in Iraq. It was worth about \$6 million many years ago but it has been vacant for about 20 years, is dilapidated, and is now worth about \$2 million. (Tr. 26; AX W.) His father also owns a one-thirteenth share of an apartment building in Iraq. Applicant estimates that the apartment building is worth about \$700,000, (Tr. 28.) Applicant has a potential inheritance from his father that he would share with his brother, sister, and mother.

Applicant's 20-year-old daughter was born in Jordan. She is a U.S. citizen by virtue of Applicant's U.S. citizenship and has resided in the United States for about three years. (Tr. 18.) She completed high school in Jordan and is currently attending college in the United States. (GX 8 at 12; AX F.) Applicant's brother was born in the United Kingdom and is a citizen and resident of the United States. (AX G.) His sister was born in Iraq, is a dual citizen of the United Kingdom and the United States, and resides in the United Kingdom. (AX M.)

Applicant testified that he does not consider his first wife's parents or siblings as in-laws, because she passed away in June 2005, more than 15 years ago. (Tr. 24.) His former mother-in-law is a citizen and resident of Iraq, who was the headmistress of a

school, employed by the Iraq Ministry of Education, until she retired more than 25 years ago. (GX 7 at 1; GX 8 at 13.) Applicant's last contact with his former mother-in-law was three or four years ago. (Tr. 22.)

Applicant's former father-in-law was a citizen and resident of Iraq who worked as a lawyer for the Iraq Ministry of Oil, the Iraq Ministry of Health, and for the Kurdish government in Iraq until he retired about 15 years ago. (GX 7 at 1; GX 8 at 13.) He is deceased. (Tr. 21.)

Applicant's former brother-in-law and two sisters-in-law are citizens of Iraq residing in the UAE. (The SOR alleges only one sister but does not identify which one.) His former brother-in-law is a chemical engineer employed by a utility company. (GX 6 at 4.) One of his former sisters-in-law is a dentist in the UAE. Applicant believes that she is a citizen of Canada. (GX 8 at 18.) The other former sister-in-law works for a U.S.-based federal contractor. (GX 6 at 4; GX 7 at 1; GX 8 at 18.) Applicant's last contact with his former brother-in-law and sisters-in-law was three or four years ago. (Tr. 22.)

When Applicant submitted his SCA, he had a bank account in Jordan worth about \$10,000. He closed the account about two years ago. (Tr. 25; AX K.) He has two bank accounts in the United States totaling about \$128,000 and a retirement account worth about \$4,000. (Tr. 52-53; AX X.)

When Applicant began working in Jordan for his current employer, he obtained a Jordanian residence card so that he would not overstay his visa. It expired in November 2019. (AX I.) He now has a Jordanian work visa. (Tr. 28-29.) He also obtained a Jordanian driver's license, which he has retained so that he can legally drive in Jordan. He will surrender his residence card when he stops working in Jordan. (Tr. 29.)

Administrative Notice—Iraq

Iraq is a constitutional parliamentary republic. The 2014 parliamentary elections generally met international standards for free and fair elections. Iraq's security forces include the regular armed forces and domestic law enforcement agencies; the Popular Mobilization Forces (PMF), a state-sponsored military organization composed of nearly 60 predominantly Shia components; and the Peshmerga, the Iraqi Kurdistan Regional Government's principal military force. Civilian authorities are not always able to maintain effective control of all security forces.

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, is playing a constructive role in the region, and has a bright economic future. 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. The U.S. government considers the potential security threats to U.S. personnel sufficiently serious to require them to live and work under strict security conditions. The U.S. Department of States warns U.S. citizens against all travel to Iraq because it is extremely dangerous.

The U.S. Department of State 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. Impunity is widespread. Security threats hinder civilians' access to the courts, and witness intimidation is common.

The Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 amended the existing Visa Waiver Program, which permitted citizens of certain countries to travel to the United States for business or tourism for up to 90 days without a visa. (Public Law 114-113, attached as Item X in HX I.) The amendment made citizens of Iraq ineligible to travel to or be admitted to the United States under the Visa Waiver Program.

EO 13769, issued on January 27, 2017, directed a comprehensive review of the process of issuing entry visas, suspended entry into the United States by aliens of certain countries, including Iraq, for 90 days, suspended refugee visas for 120 days, and directed the Secretary of Homeland Security, in consultation with the Secretary of State, to compile a list of countries for inclusion in a Presidential proclamation that would prohibit entry into the United States by aliens from those countries.

EO 13780, issued on March 6, 2017, revoked EO 13769 and reviewed the information about seven countries whose nationals were previously identified as presenting heightened risks to the security of the United States: Iran, Libya, Somalia, Sudan, Syria, Yemen, and Iran. EO 13769 recognized that Iraq presented a special case that justified different treatment, based on the close cooperative relationship between the United States and the democratically elected Iraqi government, the strong United States diplomatic presence in Iraq, the significant presence of United States forces in Iraq, and Iraq's commitment to combat ISIS. EO 13769 requires additional inquiries for an application by any Iraqi for a visa, including consultation with a designee of the Secretary of Defense and use of additional information about Iraq that has been obtained since the issuance of EO 13769. The additional inquiry must include whether an application has connections with ISIS or other terrorist organizations and individuals coming from territories controlled or formerly controlled by ISIS as well as any other information bearing on whether the applicant may be a threat to commit acts of terrorism or otherwise threaten the national security or public safety of the United States.

Administrative Notice—Jordan

The Hashemite Kingdom of Jordan (Jordan) is a constitutional monarchy ruled by King Abdullah II bin Hussein. In 2013 and 2014, the United States 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 United States' 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 United States deeply values its long history of cooperation and friendship with Jordan, with which it established diplomatic relations in 1949. The United States appreciates the leadership role that Jordan plays in advancing peace and moderation in the region. The United States and Jordan share the mutual goals of a comprehensive, just, and lasting peace between Israel and the Palestinians, and an end to violent extremism that threatens the security of Jordan, the region, and the entire globe. The peace process and Jordan's opposition to terrorism parallel and assist wider U.S. interests. U.S. policy seeks to reinforce Jordan's commitment to peace, stability, and moderation. In light of ongoing regional unrest, as well as global disruptions stemming from the COVID-19 pandemic, the United States has helped Jordan maintain its stability and prosperity through economic and military assistance and through close political cooperation.

The U.S. Department of State travel advisory for Jordan is Level 2 ("Exercise Increased Caution due to Terrorism"). The capital of Amman is currently assessed as being at considerable risk from terrorism. Transnational and indigenous terrorist groups in Jordan have demonstrated the capability to plan and implement attacks. Violent extremist groups in Syria and Iraq 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.

Administrative Notice—United Arab Emirates (UAE)

The UAE is a federation of monarchies consisting of seven emirates. The rulers of the emirates constitute the Federal Supreme Council, the country's highest legislative and executive body. The emirates are under patriarchal rule with political allegiance defined by loyalty to tribal leaders, leaders of individual emirates, and leaders of the federation.

The United States has had friendly relations with the UAE since its formation in 1971. The UAE has an influential role in the Middle East and is a key partner for the United States. The two countries enjoy strong bilateral cooperation on many issues, including defense. UAE ports host more U.S. Navy ships than anywhere else outside the United States.

The UAE is a regional and global financial and transportation hub, and terrorist organizations exploit it send and receive financial support. It is a drug-transshipment point for illegal traffickers and its position as a major financial center makes it vulnerable to money laundering. There have been numerous instances in which U.S. dual-use and military components have been shipped to Iran, Iraq, and Afghanistan through the UAE, using methods making it appear that UAE was the final destination.

The U.S. Department of State regards two emirates, Abu Dhabi and Dubai, as medium-threat locations for terrorist activity directed at or affecting U.S. Government interests. The UAE's participation in the anti-ISIS coalition and the Yemen civil war has increased the likelihood of terrorist attacks against Western interests.

The UAE vigorously monitors suspected terrorists, prosecutes individuals for terrorism-related offenses, collaborates with U.S. law enforcement on counterterrorism cases, and has foiled terrorist attacks within its borders.

The UAE maintains effective control over its security forces. The most significant human-rights issues have involved allegations of torture in detention, arbitrary arrest and detention, government interference with privacy rights, restrictions on assembly and association, and the inability of citizens to choose their government in free and fair elections.

Administrative Notice, Presidential Memorandum

The Presidential Memorandum outlines the President's commitment to revitalizing our national security and foreign policy workforce and institutions and renewal of the commitment of our institutions to the American public. It creates an Interagency Working Group on the National Security Workforce, chaired by the Principal Deputy National Security Advisor. It requires a survey of all hiring authorities that exist to recruit individuals with critical skills, including critical language skills and regional expertise, and seeks recommendations for legislative or executive action to enhance recruitment of experts.

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 daughter is a resident of Jordan (SOR ¶ 1.a); that his live-in housekeeper is a resident of Jordan (SOR ¶ 1.b); that his father-in-law is a citizen and resident of Iraq, was an attorney for the Iraqi government, and continues to provide legal advice for the government of Kurdistan (SOR ¶ 1.c); that his mother-in-law is a citizen and resident of Iraq (SOR ¶ 1.d); that his brother-in-law and sister-in-law are citizens of Iraq and residents of the UAE (SOR ¶¶ 1.e); that his sister-in-law is a resident of the UAE (SOR ¶ 1.f); and that he will inherit his father's factory in Iraq worth about \$16,000,000 and his father's apartment building in Iraq worth about \$1,000,000 (SOR ¶¶ 1.h and 1.i).

SOR ¶¶ 1.e and 1.f both allege that Applicant's sister-in-law is a resident of the UAE. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). However, in this case, the evidence shows that Applicant has two former sisters-in-law who reside in the UAE. Thus, I conclude that SOR ¶¶ 1.e and 1.f are ambiguous and lack the specificity required by Directive ¶ E3.1.3, but they are not duplicative.

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.

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).

The following disqualifying conditions are potentially relevant:

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(e): shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion;

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;

AG ¶¶ 7(a), 7(e), and 7(f) 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). See also ISCR Case No.17-03026 at 5 (App. Bd. Jan. 16, 2019) ("Heightened risk" is not a high standard.). Applicant's family connections and risk of terrorism in Iraq, Jordan, and the UAE are sufficient to establish a "heightened risk."

The allegation in SOR ¶ 1.a is not established. Applicant's daughter no longer lives in Jordan. She is a citizen and resident of the United States and has no intention of returning to Jordan.

The allegation in SOR ¶ 1.b is not established. Applicant no longer has a housekeeper.

The allegation in SOR ¶ 1.c is not established. Applicant's former father-in-law was a citizen and resident of Iraq, and he gave legal advice to the Iraqi government before he retired, but he is deceased.

The allegation in SOR ¶ 1.d is established. Applicant's former mother-in-law is a citizen and resident of Iraq.

The allegations in SOR ¶¶ 1.e and 1.f are established. Applicant's former brother-in-law and both former sisters-in law are citizens and residents of the UAE.

The allegation in SOR ¶ 1.g is not established. Applicant closed his bank account in Jordan when he learned that it raised security concerns.

The allegations in SOR ¶¶ 1.h and 1.i are established, except for the values of the two properties, which appear to be much less than alleged. His father's one-fourth share of the abandoned factory is worth about \$500,000. Assuming that Applicant, his mother, and his siblings inherited equal amounts, Applicant would inherit about \$125,000. His father's one-thirteenth share of the apartment building is worth about \$53,846, and his inheritance, assuming equal distribution, would be about \$13,461.

The evidence supports SOR ¶¶ 1.c-1.f, 1.h, and 1.i, and it is sufficient to establish the disqualifying conditions in AG ¶¶ 7(a), 7(b), 7(e), and 7(f). 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. “[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse.” ISCR Case No. 01-03120 (App. Bd. Feb. 20, 2002); see *also* ISCR Case No. 09-06457 (App. Bd. May 16, 2011). However, that presumption does not extend to the immediate family members of a former spouse. Applicant’s testimony at the hearing made it clear that he does not consider his former wife’s siblings as in-laws, and he has not had contact with them for several years. The administrative notice documents do not indicate that the governments of Iraq and Jordan target the United States for military or economic intelligence. However, Applicant’s wife’s Iraqi citizenship and their current residence in Jordan made them vulnerable to terrorists.

AG ¶ 8(b) is established. Applicant renounced his Iraqi citizenship in 1997. He has not been in Iraq since 2010. His home is in the United States. All his financial assets are in the United States. He was educated in the United Kingdom and the United States. His mother, brother, and daughter are citizens and residents of the United States. His father and sister are citizens of the United Kingdom, a staunch ally of the United States. His wife has survived the intense scrutiny required by EO 13780 and has been granted permanent-resident status in the United States. His sense of obligation to his former in-laws residing in Iraq and the UAE has waned substantially during the 15 years after his first wife’s death. He is proud of his ongoing relationship with the U.S. Marines stationed in Jordan. The Marine Corps officer who commands the Marines in Jordan holds him in high regard. I am satisfied that Applicant’s deep and long-standing relationships and loyalties in the United States will cause him to resolve any conflicts of interest in favor of the United States.

AG ¶ 8(c) is established. Applicant’s testimony made it clear that he feels little obligation to or affection for his former in-laws, and he has not had contact with them for several years.

AG ¶ 8(d) is not established. The value of the property owned by Applicant’s father is substantial. However, the Appeal Board has recognized the uncertainties surrounding the expectancy of an inheritance and has held that an applicant does not have a financial stake in a country merely because he or she may inherit real or personal property in that country at some time in the future from his or her parents. ISCR Case No 97-0403 at 3 (App. Bd. May 13, 1998).

Guideline C, Foreign Preference

The SOR alleges that Applicant has issued a Jordanian residence card and driver’s license. (SOR ¶ 2.a). The concern under this guideline is set out in AG ¶ 9:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may provide information or make decisions that are harmful to the interests of the United States. Foreign involvement raises concerns about an individual's judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. *By itself*; the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

The following disqualifying conditions under this guideline are potentially relevant:

AG ¶ 10(a): applying for and/or acquiring citizenship in any other country;
and

AG ¶ 10(b): failure to report, or fully disclose when required, to an appropriate security official, the possession of a passport or identity card issued by any country other than the United States.

AG ¶ 10(a) is established because Applicant acquired Iraqi citizenship based on his father's citizenship. AG 10(b) is not established, because there is no evidence that Applicant was required to report his possession of a Jordanian identity card and driver's license and no evidence that he attempted to conceal them.

The following mitigating conditions are potentially relevant:

AG ¶ 11(b): dual citizenship is based solely on parental citizenship or birth in a foreign country, and there is no evidence of foreign preference;

AG ¶ 11(c): the individual has expressed a willingness to renounce the foreign citizenship that is in conflict with U.S. national security interests; and

AG ¶ 11(e): the exercise of the entitlements or benefits of foreign citizenship do not present a national security concern.

AG ¶¶ 11(b) and 11(c) are established. Applicant's Iraqi citizenship was based solely on his father's citizenship, and he renounced his Iraqi citizenship in 1997.

AG ¶ 11(e) is established. Arguably, Applicant's prior possession of a Jordanian residence card was an "identity card." However, it has expired and Applicant has not renewed it. His work visa, required by his employer, and driver's license issued by the Jordanian government do not conflict with U.S. national security interests.

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 and C in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines B and C, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns under Guidelines B and C.

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.i:	For Applicant
Paragraph 2, Guideline C (Foreign Preference):	FOR APPLICANT
Subparagraph 2.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