



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----) ISCR Case No. 20-01494
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)
Applicant for Security Clearance)

Appearances

For Government:
Andrew Henderson, Esq., Department Counsel

For Applicant:
Alan V. Edmunds, Esq.
The Edmunds Law Firm

July 7, 2021

Decision

ROSS, Wilford H., Administrative Judge:

Based on a review of the pleadings, testimony, and exhibits, I conclude that Applicant has mitigated the concerns related to foreign influence raised by the presence of his family members in Iraq. His request for national security eligibility and a security clearance is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on December 10, 2019. (Government Exhibit 1.) On September 11, 2020, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline B (Foreign Influence). The action was taken under Executive Order 10865,

Safeguarding Classified Information Within Industry (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective within the Department of Defense on or after June 8, 2017.

Applicant answered the SOR on October 9, 2020, and requested a hearing before an administrative judge. (Answer.) Department Counsel was prepared to proceed on January 5, 2021. The case was assigned to me on January 27, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 27, 2021, scheduling the hearing for March 3, 2021. The hearing was convened as scheduled. The Government offered Government Exhibits 1 and 2, which were admitted without objection. The Government also submitted Hearing Exhibit I for Administrative Notice. Applicant testified on his own behalf and submitted Applicant Exhibits A through Q, which were also admitted without objection. Applicant requested that the record remain open for receipt of additional documentation. Applicant Exhibits R through T were received in a timely manner and admitted without objection. DOHA received the transcript of the hearing (Tr.) on March 16, 2021.

Procedural Rulings

At the hearing, the Government requested I take administrative notice of certain facts relating to the Federal Republic of Iraq (Iraq). Department Counsel provided a seven-page summary of the facts, supported by thirteen Government documents pertaining to Iraq, identified as Hearing Exhibit I. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact. (Tr. 10.)

The SOR under allegation 1.b states that Applicant has a sister-in-law who is a citizen and resident in Iraq. Applicant states that through an inadvertent error he did not list on Government Exhibit 1 at Section 18 that he actually also has a sister who is a citizen and resident of Iraq. Allegation 1.b was amended to comport with the facts by substituting “sister” for “sister-in-law,” pursuant to ¶ E3.1.17 of the Directive. (Tr. 28-29, 43-47.)

Findings of Fact

Applicant admitted both of the SOR allegations with explanations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 38 years old, divorced, and has one child. He is applying for national security eligibility and a security clearance in connection with his proposed overseas

employment with a defense contractor. This is his first application for a security clearance. (Government Exhibit 1 at Sections 12, 13A, 17, and 18; Tr. 37-38, 42-43.)

Paragraph 1 – Guideline B (Foreign Influence)

Applicant was born in Iraq in 1983. He has two brothers, who currently live in the United States and are naturalized American citizens. His parents, sister, ex-wife, and eight-year-old son are all citizens and residents of Iraq. (Government Exhibit 1 at Sections 17 and 18; Applicant Exhibit I.)

Applicant went to college in Iraq, graduating with a degree in engineering in 2005. From 2006 through early 2012 Applicant worked for various private contractors supporting American forces in Iraq. Applicant primarily worked in the Green Zone and on other bases. Occasionally he came under mortar fire during his time working for the American forces. Applicant immigrated to the United States in 2012 under a special visa program for Iraqis who had worked with American forces. Applicant became an American citizen on April 20, 2017. (Government Exhibit 1 at Section 13A; Applicant Exhibits C, E, and H; Tr. 18-19, 32-36.)

Applicant received a Master's degree in Engineering from a major American university in 2015. He has worked as a civil engineer in the Public Works Department of a mid-size American city since 2018. He makes a good salary at his job, enabling him to pay all of his bills in a timely fashion. (Government Exhibit 1 at Section 13A; Applicant Exhibits A, B, F, G, J, and K; Tr. 19-21, 31, 36.)

As stated, Applicant's parents, son and sister are citizens and residents of Iraq. None of them have connections to the Iraqi government. Applicant has been working for several years to have these people immigrate to the United States. None of them currently have permission to relocate to the United States. Processing of the petitions for the immigration of his family stopped in 2017, pursuant to the actions of the United States Government. Just recently the processing may have begun again. (Applicant Exhibits L, M, R, S, and T; Tr. 17-18, 22, 25, 38-39, 50-51.)

Applicant was in regular contact with his parents and son before he was issued the SOR in September 2020. Since that time he has cut off communication with his family. Applicant has no contact with his ex-wife. (Government Exhibit 2; Tr. 26-29, 31.)

Applicant has both an active American passport and active Iraqi passport. He used his Iraqi passport in preference to his American passport when he traveled to Iraq in 2017, 2018, and 2019. Applicant inadvertently left off of his e-QIP the fact that he had traveled to Iraq in 2019. Applicant stated on the e-QIP, "I only used the Iraqi passport when I enter my country to avoid the visa fee." (Government Exhibit 1 at Sections 10 and 20C, Government Exhibit 2; Applicant Exhibit C; Tr. 23-25, 38-42.)

Applicant testified that he would not do anything to harm the United States. He further stated that his loyalty lies, "Absolutely America." (Tr. 30.)

Mitigation

Applicant has been a successful employee at his current employment. His annual evaluations show him to be a talented and diligent engineer. (Applicant Exhibits A, F, and G.)

Applicant submitted several letters of recommendation from people who know him on a personal and professional level. Applicant Exhibit D contains three letters. The first two are from friends. The third is from a colleague who worked with Applicant in Iraq. The Applicant is described as “an excellent, intelligent and articulate Engineer.”

Applicant Exhibit P contains an additional letter of recommendation from another work colleague of Applicant in Iraq, who worked for the U.S. military for many years. The letter writer states, “[My] sincere opinion that there was no better former Iraqi Engineer to support and trust with a US Security Clearance, and to entrust with further missions in his former region.”

Iraq

I take administrative notice of the following facts: In 2003, The United States led a coalition to remove Saddam Hussein from power in Iraq. After free elections, Iraq’s new government took office. Despite the elections and new government, Iraq remains engulfed in violence, perpetrated by Al Qaeda terrorists and other insurgents. Numerous attacks and kidnappings have targeted the U.S. Armed Forces, contractors, and other civilians, as well as Iraqis. Even with aggressive governmental action against terrorists, the threat of terrorism in Iraq remains high. Terrorist groups conduct intelligence activities as effectively as state intelligence services. (Hearing Exhibit I: Attachments.)

Policies

When evaluating an applicant’s suitability for national security eligibility and a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who seeks national security eligibility enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Paragraph 1 - Guideline B (Foreign Influence)

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

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Two are potentially applicable in this case:

(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

(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.

Applicant's father, mother, son, and sister live in Iraq. Applicant is divorced from his now ex-wife. The evidence is sufficient to raise these disqualifying conditions.

Iraq has significant internal anti-western terrorism threats that operate openly and contrary to U.S. interests. Accordingly, Applicant's family connections in that country have the potential to generate a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶ 7(a). The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, 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. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).)

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 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.

Applicant is a proud and loyal American citizen. He has been successful in the United States both academically and professionally. Applicant's two brothers live in the United States and are also American citizens. He has financial connections to the United States. AG ¶¶ 8(a) and (b) apply.

Applicant currently has minimal contact with his family members who live in Iraq. However, AG ¶ 8(c) does not fully apply because he was in extensive contact with his family members before issuance of the SOR.

Applicant was involved in assisting American forces as an engineer for six years at several overseas locations. There is some indication that he was under fire at various times. It is also noted that he was extensively involved with assisting American forces at a time when he was not an American citizen, which was supported by letters of recommendation from American co-workers. While that fact is not normally to be considered a factor in granting a clearance, the Appeal Board stated in ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006) the following:

As a general rule, Judges are not required to assign an applicant's prior history of complying with security procedures and regulations significant probative value for purposes of refuting, mitigating, or extenuating the security concerns raised by the applicant's more immediate disqualifying conduct or circumstances. See, e.g., ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No. 02-10113 at 5 (App. Bd. Mar. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd. May 30, 2006). However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the national security. See, e.g., ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006). The presence of such circumstances can give credibility to

an applicant's assertion that he can be relied upon to recognize, resist and report a foreign power's attempts at coercion or exploitation.

I have carefully considered the fact that Applicant's family lives in Iraq, particularly his son. He obviously loves his family and is hoping to have them immigrate to the United States. In this particular case, I find that Applicant has mitigated the security significance arising from their presence for the following reasons. He has served U.S. national interests with pride and exceptional ability during his time overseas, when he was not an American citizen. Applicant is a successful engineer with a strong family presence in the United States in the persons of his two brothers. He has strong letters of recommendation from people who worked with him in Iraq. Applicant has completely mitigated the security significance of the presence of his family members in Iraq. Paragraph 1 is found for Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

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

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but warrant additional comment.

Applicant was born and raised in Iraq. Since 2012 he has lived full time in the United States, working and attended school in order to advance himself. Applicant has shown himself to be a talented and patriotic American. He can be expected to resolve any conflict of interest in favor of the United States due to his sense of loyalty to the United States.

