



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



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 19-01242
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Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: Alan Edmunds, Esq.

11/08/2021

Decision

MALONE, Matthew E., Administrative Judge:

The security concerns raised by Applicant's ties to family members who are citizens of and reside in Iraq are not mitigated. His request for a security clearance is denied.

Statement of the Case

On April 18, 2017, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain eligibility for a security clearance required for his employment with a federal contractor. Based on the results of the ensuing background investigation, Department of Defense (DOD) adjudicators could not determine, as required by Security Executive Agent Directive (SEAD) 4, Section E.4, and by DOD Directive 5220.6, as amended (Directive), Section 4.2, that it is clearly consistent with the interests of national security for Applicant to have a security clearance.

On August 12, 2019, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns articulated in the adjudicative guidelines (AG) issued by the Director of National Intelligence on December 10, 2016, to be effective for all adjudications on or after June 8, 2017. Specifically, this case is governed by Guideline B (Foreign Influence).

Applicant timely responded to the SOR (Answer) and requested a hearing. I received the case on January 16, 2020, and set this matter for hearing on April 1, 2020. On March 20, 2020, I cancelled that hearing in response to pandemic-related restrictions imposed by the Secretary of Defense. On July 12, 2021, I rescheduled this case for hearing on August 10, 2021, via web-based video conferencing. The parties appeared as scheduled. Department Counsel proffered Government Exhibits (GX) 1 – 6. GX 1 – 3 were admitted without objection.

GX 4 – 6 consisted of information about Iraq and Yemen. Department Counsel asked that I take administrative notice of the information contained therein. After allowing Applicant's counsel to be heard in response to the motion, I granted Department Counsel's request and have considered herein the information provided as appropriate.

Appellant appeared as scheduled, testified, and proffered AX A – T. All exhibits were admitted without objection. I received a transcript of the hearing (Tr.) on August 19, 2021.

Findings of Fact

The SOR alleged that Applicant's mother is a citizen of Iraq and resides in the United Kingdom (U.K.) (SOR 1.a), and that his father is a citizen and resident of Iraq (SOR 1.b). The SOR also alleged that Applicant's two brothers are Iraqi citizens residing in the United States (SOR 1.c), and that his sister is an Iraqi citizen living in the Czech Republic (SOR 1.d).

Additionally, it was alleged that Applicant's father-in-law is an Iraqi citizen living in Iraq and working as an Iraqi government official (SOR 1.e); that one of his four sisters-in-law is an Iraqi citizen who works as an Iraqi government official assigned to the Iraqi Embassy in the United States (SOR 1.f); that one of Applicant's brothers-in-law is an Iraqi citizen living in Iraq and serving as an officer in the Iraqi Ministry of Interior (SOR 1.g); and that another brother-in-law is an Iraqi citizen living in Iraq and serving as a non-commissioned officer (NCO) in an Iraqi counterterrorism unit (SOR 1.h).

Finally, the SOR alleged that Applicant's friend is a citizen of Yemen and is the Yemeni ambassador to the United States (SOR 1.i); that Applicant's cousin is an Iraqi citizen living in Oman, and that he once was an Iraqi Army chief executive officer (SOR 1.j); and that Applicant has three other sisters-in-law are Iraqi citizens living in Iraq, the United Arab Emirates (UAE), and the Netherlands (SOR 1.k).

In response to each of the SOR allegations, Applicant denied that any of the facts alleged would affect his ability to protect sensitive information and the interests of the United States. Nonetheless, the explanations he provided with each response confirmed the facts alleged and I have entered each of his responses as an admission. (Tr. 9 – 10) In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is 40 years old. He was born and raised in Iraq, where he lived and worked until coming to the United States at age 39 with his wife and twin children on special immigrant visas (SIV) in January 2011. He, along with his wife and children, also native-born Iraqi citizens, became naturalized U.S. citizens in May 2016. (Answer; GX 1 – 3; AX D; AX E; Tr. 24)

In Iraq, Applicant earned a bachelor's degree in an information technology field in 2003. Between 2004 and 2011, he was employed by a series of U.S. companies and non-governmental organizations (NGOs) working in Iraq in support of U.S. post-invasion efforts there. Between January 2009 and his departure from Iraq in January 2011, Applicant worked for U.S. contractors doing business in support of the U.S. Agency for International Development (USAID). During that time, he was screened on multiple occasions by U.S. counterintelligence personnel for access to the International Zone (IZ) in Baghdad. His work in support of USAID and other American interests qualified him to apply for SIVs for him and his family. He began the application process in 2008. (Answer; GX 1 – 3; AX K; AX L; Tr. 22 – 26, 39)

After arriving in the United States, Applicant found work as a linguist, cultural advisor, and role player with federal contractors supporting U.S. military training efforts for the ongoing mission in Iraq. His work has frequently required that he have access to military facilities across the United States. In March 2017, Applicant was hired by his current employer, who is sponsoring his request for a security clearance. It is anticipated that Applicant will work overseas in this position. In May 2017, Applicant completed a military counter-intelligence screening process in preparation for his work overseas. During that process, Applicant submitted a detailed list of all of his foreign contacts, most of whom are immediate and extended family members living in Iraq, the United States, and elsewhere. That list included the nature of his relationship with those people, their occupations, the frequency of his contact with those people and the last time he had contact with any of them. In response to government interrogatories in 2019, he submitted an updated version of that list. (GX 1 – 3; AX K)

Applicant's parents are citizens of Iraq; however, they are now living in the UK. His mother is a naturalized British citizen and his father is a permanent resident alien in the UK. Applicant is in regular contact with them because both are elderly and have medical challenges. Applicant has not seen either of his parents in person since 2018, when they visited him in the United States. (GX 1 – 3; AX R – T; Tr. 29 – 30, 58 – 59)

As alleged in SOR 1.c, Applicant has two brothers. One of his brothers lives in the United States as a naturalized U.S. citizen. Another brother lives in Canada. He is married to an Iraqi citizen, Applicant's sister-in-law referenced in SOR 1.f. Until recently, she worked as an Iraqi diplomatic official at Iraq's embassy in Washington D.C. Both Applicant's brother and sister-in-law are living in Canada, where they were recently granted political asylum. (GX 1 – 3; AX P; AX Q; Tr. 30, 45 – 47, 59)

Applicant has one sister. As alleged in SOR 1.d, she is still an Iraqi citizen, but now lives in the Czech Republic as a permanent resident alien there. Applicant last saw his sister in 2011. (GX 1 – 3; Tr. 31)

As alleged in SOR 1.e, Applicant's wife's father is an Iraqi citizen and still lives in Iraq. He is an Iraqi government official working in the transportation ministry. Applicant's wife's two brothers are both Iraqi citizens living and working in Iraq. One is an officer in the Iraqi interior ministry (SOR 1.g) and one is an NCO in an Iraqi counterterrorism unit (SOR 1.h). Applicant has had no direct contact with his father-in-law or either of his brothers-in-law since 2018. Applicant's wife also has three sisters who are Iraqi citizens (SOR 1.k). One still lives in Iraq, one lives in the Netherlands, and one lives in the United Arab Emirates. Applicant last had direct contact with his sisters-in-law in 2011. Applicant's wife has occasional contact with her father and siblings; however, Applicant does not ask about those conversations. (Answer; GX 1 – 3; Tr. 31 – 35, 47 – 48, 57)

Applicant also has a cousin who is an Iraqi citizen living in Oman. When Applicant disclosed this contact in 2017, his cousin was a senior Iraqi Army officer; however, Applicant does not know if his cousin is still in the military and, if so, what his current rank is. Applicant has not had any contact with his cousin since 2016. Before 2016, contact with his cousin was limited, at most. (GX 1 – 3; Tr. 36, 48)

Applicant has a friend who is a citizen of Yemen and, until December 2020, served as the Yemeni ambassador to the United States. He is currently Yemen's foreign minister. Before becoming an ambassador, he was active in government reform efforts; however, in the early days of protests underlying the current civil war, he was kidnapped by anti-government forces seeking leverage in negotiations with the Yemen government. Applicant first met this person in the 1990s, when the future ambassador and a friend of Applicant's sister started dating while in college. Applicant last was in contact with the ambassador in 2018 in connection with a visit to the United States by Applicant's parents. Before that visit, Applicant had not had any contact with the ambassador since the late 1990s or early 2000s. In 2018, the ambassador hosted a social event at his residence for Applicant's parents on the occasion of their visit to see Applicant. Applicant also saw the ambassador during his parents' visit when he took his father to visit the ambassador at the Yemeni embassy. He has not had any contact with the ambassador since then. (GX 1 – 3; GX 6; Tr. 33 – 34, 37 – 39, 48)

Before Applicant emigrated from Iraq, and while he was working in support of USAID and other American interests, Applicant was threatened with physical violence by

anti-U.S. insurgents. In 2004, he was seen witnessing acts of violence directed at Iraqis who had voted in the country's first democratic election. Insurgents approached him and threatened to kill him if he continued to watch what was happening. On another occasion, Applicant became aware that he was on a list for possible assassination simply because he had been observed entering the IZ using U.S.-issued credentials. (GX 2; GX 3; Tr. 27 – 28, 44 – 40, 52 – 56)

Applicant has no financial or other interests in Iraq or anywhere else outside the United States. He still works occasionally as a role player as requested by other defense contractors. When he is not working as a role player, he drives for Uber or Lyft or delivery services. Applicant does not discuss the substance of his work as a role player with his wife; however, she knows that he works with the U.S. military and that he may work overseas should he receive a security clearance. Applicant has not discussed his defense-related work with anyone else in his family or his wife's family. As far as they are concerned, he is a taxi driver in the United States. (GX 3; AX H; Tr. 52 – 55)

Since 2018, Applicant has had no contact with any Iraqi relatives other than his parents. Because of their advanced age and health concerns, Applicant contacts them by phone or social media every week. Because of the counter-intelligence screening, and after receiving the SOR, Applicant decided to cut off contact with the rest of his relatives and his wife's relatives. For that reason, Applicant was unable to provide current information about his foreign relatives and associates in response to questioning at the hearing. (Tr. 57 – 59, 61 – 62)

To properly assess the security significance of these facts within the adjudicative guideline at issue, I have taken administrative notice of certain facts regarding Iraq and Yemen as presented in GX 4 and 5. As to Iraq, of particular note is the continued inability of its freely elected government to quell the violence and instability that persist in parts of Iraq. These conditions are fueled and perpetrated by terrorist groups affiliated with Al-Qaeda and ISIS, as well as by Sunni insurgents and Iranian-backed Shiite militias. As a result, some parts of Iraq remain wholly unstable. Even the city of Baghdad is still subject to random acts of terrorist violence. (GX 4)

U.S. citizens and interests in Iraq remain at high risk for kidnapping and terrorist violence. The U.S. State Department has advised against all individual travel to Iraq. The ability of the U.S. Embassy to provide consular services to U.S. citizens outside Baghdad and the southern city of Basra is extremely limited given the security environment. ISIS again controls significant portions of Iraq's territory, and numerous other terrorist and insurgent groups are active in Iraq. Such groups regularly attack both Iraqi security forces and civilians. Anti-U.S. sectarian militias may also threaten U.S. citizens and western companies throughout Iraq. U.S. Government and western interests remain possible targets for attacks. Additionally, there are significant human-rights problems in Iraq. Widespread corruption, as well as abuses by Iraqi security forces in response to acts of violence by terrorists and others, have undermined confidence in the Iraqi government and its judiciary. Human-rights violations by Iraqi law enforcement are not uncommon and

are not being addressed when identified. Those include killing, kidnapping, and extorting civilians, as well as inhumane conditions in detention and prison facilities, arbitrary arrest and lengthy pretrial detainment, denial of fair public trial, limits on freedom of expression, freedom of the press, censorship of religion, limits on peaceful assembly, and societal abuses of women. The various terrorist and militia organizations are also responsible for significant human rights abuses in Iraq. (GX 4)

Yemen achieved total independence in 1990 through the unification of North Yemen, a 1918 vestige of the Ottoman Empire that became the Yemen Arab Republic in 1962, and South Yemen, previously the People's Republic of Southern Yemen until 1967, when the British withdrew. As to risk assessment, the Government's information shows that Yemen has been in a state of civil war since 2015 between the Yemen government and Houthi rebels. Much of the fighting is supported by a U.S. – Saudi coalition on the side of government forces, and by Iran on the side of the Houthis. The results have been catastrophic for Yemen. Iranian-backed terror organizations – notably, Al-Qaida on the Arabian Peninsula (AQAP), ISIS – Yemen Hezbollah (IYH), and Islamic Revolutionary Guard Force – Qods Force (IRGC-QF) – have taken advantage of the inability of the Yemen government to maintain order or provide basic government services to embark on numerous terror campaigns in much of the country. Famine and a complete lack of human rights are the norm in much of Yemen. The U.S. State Department has issued a Level 4 (Do Not Travel) warning advising Americans not to travel to Yemen. Because Yemen's government cannot satisfactorily screen persons traveling from Yemen to the United States, Yemenis are not eligible for the U.S. Visa Waiver Program, an indication of the U.S. government's concerns about the possible export of international terrorism from Yemen to the United States. (GX 5)

Applicant is loyal to the United States and expressed pride in the work he has done for the U.S. military and in support of U.S. interests in Iraq. Persons with whom Applicant has worked in both capacities recommend him for access to sensitive information based on their observations of his hard work, honesty, reliability, and trustworthiness in sensitive circumstances. All of his personal and financial assets are in this country. Applicant does not provide financial support to anyone outside of the United States. He is registered to vote in the United States and he meets all of his income tax reporting obligations as required. (Answer; AX G – N; Tr. 36 – 37)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). (See Directive, 6.3) Decisions must also reflect consideration of the factors listed in ¶ 2(d) of the guidelines. Commonly referred to as the "whole-person" concept, those factors are:

(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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest for an applicant to either receive or continue to have access to classified information. (*Department of the Navy v. Egan*, 484 U.S. 518 (1988))

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion. (See *Egan*, 484 U.S. at 528, 531) A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. (See *Egan*; see also AG ¶ 2(b))

Analysis

Foreign Influence

The security concern under this guideline is stated at 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.

In addition to Applicant's admissions, the Government presented sufficient reliable information to establish the facts alleged in the SOR. Applicant has both close and casual ties to citizens of Iraq and Yemen residing in Iraq, the United States, Canada, and elsewhere. This information reasonably raises the security concern expressed at AG ¶ 6.

In examining these facts more specifically, the concerns about Applicant's parents and his siblings are not disqualifying, as they have no continuing ties in Iraq. His parents reside in Great Britain, are elderly, and have no ongoing ties to Iraq. His mother is now a British citizen and his father is a permanent resident alien there. One of Applicant's brothers is now a U.S. citizen and resident. His other brother, whose wife is a former Iraqi diplomatic official, were recently granted political asylum in Canada, a status that militates against any continued connection in or with Iraq. Finally, Applicant has had little or no contact with his sister, who has permanent resident status in the Czech Republic and is unlikely to return to Iraq.

As to Applicant's relationship with the former Yemen ambassador to the United States, Applicant knows him only by way of his sister, to whose friend the ambassador is married, and by way of Applicant's father. This would carry some security significance if Applicant himself had been in ongoing contact with the ambassador. However, Applicant had not had contact with the ambassador between the late 1990s and 2018, when Applicant's parents visited him in the United States. There also has been no ongoing communication or contact between Applicant and the ambassador since 2018. Although the circumstances in Yemen certainly present a heightened risk of pressure or coercion, available information shows that Applicant does not have any contact with Yemen that would give rise to such risks.

Applicant's relationships with his cousin in Oman and his wife's sisters in the Netherlands and the UAE do not present unacceptable security risks. Applicant last had contact with his cousin in 2016, and his contact before then was sporadic. Additionally, there is nothing in the record to suggest that Oman presents a heightened risk. Likewise, he has no direct contact with two of his sisters-in-law living in countries not associated with any heightened risk of pressure or coercion.

The allegations at SOR 1.a – 1.d, 1.f, 1.i, and 1.j are resolved for Applicant. SOR 1.k might be resolved for Applicant were it not for the inclusion of a sister-in-law in Iraq in that allegation.

The allegations regarding Applicant's ties to his wife's family in Iraq (SOR 1.e, 1.g, 1.h, and 1.k) remain unresolved. His wife's father and two brothers are government officials in Iraq. Also, one of her sisters still lives in Iraq. Although Applicant may not have direct contact with his in-laws, there is a rebuttable presumption that because his wife is

close to her father and siblings, he also has a close relationship with them. Applicant did not present information that would rebut that presumption. The closeness of those relationships remains a concern because they reside in Iraq, a country that presents a heightened risk of pressure or coercion. Additionally, the fact that his father-in-law and his two brothers-in-law are government officials in Iraq adds to the weight of his burden of persuasion in mitigating the Government's security concerns.

With respect to SOR 1.e, 1.g, and 1.h, all of the foregoing requires application of the following AG ¶ 7 disqualifying conditions:

(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

(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.

By contrast, I have considered the following pertinent AG ¶ 8 mitigating conditions:

(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; and

(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.

These mitigating conditions can only be applied to SOR 1.a – 1.d, 1.f, 1.i, and 1.j. The remaining allegations have not been mitigated. It has not been shown that Applicant's wife is somehow not close to her relatives in Iraq. Accordingly, Applicant is presumed to have close relationships with his in-laws in Iraq, three of whom are government officials there. While the Iraqi government itself might not act to pressure or coerce those contacts, the instability and lack of respect for civil liberties engendered by Iraq's inability to stabilize its internal affairs poses a real threat to U.S. persons and interests there. Those same

issues have given rise to terrorists and radical militias known to target U.S. citizens and Iraqis with identifiable ties to U.S. interests in Iraq.

Applicant has lived and worked in the United States since 2011. Although his sense of loyalty to the United States is significant, that information is not sufficient to outweigh the heightened risk of coercion presented by the presence of his wife's family in Iraq. I conclude none of the AG ¶ 8 factors can be applied to SOR 1.e, 1.g, 1.h, and 1.k. The security concerns about foreign influence are not mitigated.

I also evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). It cannot be disputed that Applicant is a loyal American citizen and is dedicated to his work in support of U.S. interests. In the context of assessing an individual's suitability for access to classified information, however, his circumstances must be examined with the protection of the national interest in mind. This decision is a recognition of the heightened risks associated with Applicant's close ties of affection for persons who are government officials in a country known, in this case, to present a real danger to those persons from groups seeking to harm U.S. interests. The state of affairs in Iraq and Applicant's personal ties in that country sustain doubts about the suitability of granting him access to classified information. Because protection of the interests of national security is the principal focus of these adjudications, those doubts must be resolved against the Applicant's request for clearance.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a – 1.d, 1.f, 1.i, 1.j:	For Applicant
Subparagraphs 1.e, 1.g, 1.h:	Against Applicant

Conclusion

It is not clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge