



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 20-00257
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Applicant for Security Clearance)

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: *Pro se*

01/07/2022

Decision

MALONE, Matthew E., Administrative Judge:

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

Statement of the Case

On April 16, 2018, 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, adjudicators at the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) 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 May 1, 2020, the DCSA CAF issued to Applicant a Statement of Reasons (SOR). The SOR alleged 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. On November 24, 2021, I scheduled this case to be heard remotely using a video conferencing platform on December 8, 2021. The parties appeared as scheduled. I received a transcript of the hearing (Tr.) on December 16.

Department Counsel proffered Government Exhibits (GX) 1 and 2. GX 1 was admitted without objection; however, for reasons discussed at the hearing (Tr. 16 – 22), I *sua sponte* excluded GX 2, a summary of subject's personal subject interview with a government investigator on August 24, 2018. GX 2 is included in the case file for possible reference on appeal.

Department Counsel also proffered Hearing Exhibits (HX) 1 (Discovery Letter from Department Counsel to Applicant, dated November 9, 2020) and HX 2 (Request for Administrative Notice, dated October 27, 2020). Both exhibits are included in the record. Through HX 2, Department Counsel asked that I take administrative notice of the information contained therein about Iraq. I granted Department Counsel's request and have considered herein the information provided as appropriate. Appellant appeared as scheduled, testified, and proffered post-hearing Applicant Exhibit (AX) A, which I admitted without objection. (Tr. 21 – 22)

Findings of Fact

The SOR alleged that Applicant's mother (SOR 1.a) and three sisters (SOR 1.b) are citizens and residents of Iraq. The SOR also alleged that three of Applicant's four brothers are citizens and residents of Iraq serving in the Kurdish military forces there (SOR 1.c); and that his fourth brother is a citizen and resident of Iraq working for Kurdish security forces there (SOR 1.d). Lastly, the SOR alleged that Applicant "maintain[s] contact with several Iraqi citizens on a continual basis" (SOR 1.e). Applicant admitted without explanation all of the SOR allegations. In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is 40 years old. He is one of seven children, all of whom were born and raised in Iraq. Only one of his siblings is younger than him. Applicant immigrated to the United States in April 2012, and he became a naturalized U.S. citizen in November 2017. He and his wife, a native-born U.S. citizen, have been married since June 2014. They

have two children under age 10, both of whom were born in the United States. (GX 1; Tr. 50 – 51)

Between June 2007 and January 2012, Applicant worked in Iraq for U.S. contractors doing business in support of U.S. military missions there. Most of his work involved translator and linguist duties in support of U.S.-led training of new Iraqi police officers. None of his work required a security clearance and there is no indication in the record that he was ever vetted for access to sensitive information. Between January and April 2012, Applicant also worked as a paramedic in his native province in Iraq. Before the U.S. invasion of Iraq in 2003, Applicant had studied for three years to become a mathematics teacher there. (GX 1; Tr. 7, 27 – 32)

In April 2018, the sponsor of his request for clearance extended to Applicant a job offer for work as a linguist in Iraq. That job offer is still pending and contingent on his eligibility for a security clearance. After arriving in the United States and holding a variety of jobs, he obtained his commercial driver's license (CDL) in March 2014 and found work as a delivery driver sufficient to support his family while waiting for his clearance to be adjudicated. (GX 1; Tr. 28, 52)

Applicant and his wife bought a house in the United States in February 2016. In May 2021, Applicant sold the house and relocated with his family to his hometown in Iraq. He relies on a cousin in the United States to forward his mail to him. Applicant deposited the proceeds from the sale of his home in a U.S. bank because he does not trust the banking system in Iraq. He has been living off those funds while he waits for his clearance. Applicant's wife now works in Iraq as a teacher, and he is seeking non-governmental employment in Iraq while he continues to wait for his clearance. He expressed a general intent to return to the United States, but he has no immediate plans to do so. It may be that Applicant's wife and children will return to the United States; however, he expects to stay and work in Iraq if he receives a clearance. (GX 1; Tr. 45, 55, 65)

Applicant, his wife, and their children lived with family members when they first emigrated to Iraq in 2021. He is still in regular contact with his elderly mother and with his sisters who live in the same region of Iraq as Applicant. His mother is elderly and Applicant visits her when he can. In so doing, he also sees his sisters, who live in the same area as his mother. (Tr. 33 – 35)

Three of Applicant's brothers are on active military duty in a provincial militia fighting Islamic State and other insurgents. The fourth brother works for a provincial security and intelligence force supporting the same mission. Before Applicant returned to Iraq, he had at least monthly contact with them. He still is in regular contact with them except when their duties take them away from the area where Applicant and his family now live. Applicant's mother and sisters have never worked outside the home, and they live in the same region as Applicant. Before he returned to Iraq, Applicant had at least monthly contact with his mother and one sister, and weekly contact with his other sister. He now talks with his mother and sisters at least weekly. After living with one of his sisters

when he returned to Iraq, Applicant now visits his mother whenever he can. Applicant also has extended family, such as cousins, aunts and uncles, as well as some friends in Iraq with whom he has kept in touch through social media. In-person contact with them is rare. (GX 1; Tr. 38 – 44)

Before Applicant left Iraq in 2012, he worked closely with U.S. Army personnel at a forward operating base (FOB) in Iraq. Most of his work supported U.S. military police units involved in training Iraqi security forces. For his work with the U.S. military, he did not receive a fully adjudicated security clearance; rather, he was briefed on an ad hoc basis by unit leaders if the need for accessing sensitive information arose. Applicant expressed pride in the work he has done for the U.S. military and in support of U.S. interests in Iraq. His immediate family is aware that he worked for the U.S. military, and some of them know that he now is awaiting employment with a U.S. company for work in Iraq. (AX A; Tr. 29 – 32, 51 – 52)

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 as presented in HX 2. 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)

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.

Available information shows that Applicant has both close and casual ties to citizens of Iraq residing in Iraq. It also shows that he continues to be in contact with those persons, at times frequently. This information reasonably raises the security concern expressed under this adjudicative guideline. More specifically, conditions in Iraq present a heightened risk that Applicant's relatives and associates in Iraq (or Applicant himself now that he lives there) may be vulnerable to pressure or coercion as a means of compromising Applicant's willingness and ability to protect sensitive U.S. information. The disqualifying condition at AG ¶ 7(a) applies:

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.

The record also supports application of AG ¶ 7(b):

(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.

Three of Applicant's brothers serve in a foreign military organization in Iraq. The fourth works for a foreign intelligence organization. Applicant's close ties to family members in those circumstances pose a potential conflict with respect to his work with U.S. interests and access to sensitive information.

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.

The record does not support application of any of these mitigating conditions. Applicant has continuous contact with immediate family members -- his mother, siblings, and others. These contacts are more frequently in person now that he, too, lives in Iraq. Although he lived and worked in the United States starting in 2012, all of his personal interests now are in Iraq. He sold his house in the United States and returned with his family to Iraq pending his request for a security clearance. This is not simply an extended visit to see his mother and siblings, and to introduce his children to their relatives and Iraqi heritage. Applicant's wife, a native-born U.S. citizen, is now working as a teacher, and Applicant is seeking employment in Iraq unrelated to his pending job offer in the United States. He was already working in the U.S. and had put down roots as a homeowner; however, he no longer has any "deep and longstanding relationships and loyalties in the United States" that might cause him "to resolve any conflict of interest in favor of the U.S. interest." Finally, Applicant's ties in Iraq are mostly familial, which by definition, are not casual. On balance, 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). Applicant's past work with the U.S. military and his time living in the United States indicate that Applicant is a loyal American citizen and would be dedicated to any future work in support of U.S. interests. It may be that his brothers were serving in foreign military and intelligence positions at the same time Applicant was working with the U.S. military. Nonetheless, those circumstances were not subjected to the same scrutiny now being applied through this background investigation and adjudication. Further, Applicant's circumstances now reflect a less favorable balance toward U.S. interests. While in the U.S., he was naturalized, married another U.S. citizen with whom he now has children, bought a house, and found steady employment. The security significance of those facts

is now undermined by his recent relocation to Iraq and the relative absence to any ties in the United States.

In the context of assessing an individual's suitability for access to classified information, his circumstances must be examined with the protection of the national interest in mind. This decision is not a commentary on Applicant's loyalty to or affection for the United States. Rather, it is a recognition of the heightened risks associated with Applicant's close ties of affection for persons in a country known, in this case, to present a real danger 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:

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| Paragraph 1, Guideline B: | AGAINST APPLICANT |
| Subparagraphs 1.a – 1.ej: | 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