



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 20-03345
)
Applicant for Security Clearance)

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel
For Applicant: Jamie Phillips, Esq.
03/17/2022

Decision

MASON, Paul J., Administrative Judge:

Applicant’s overseas contacts with his sister and his mother, and his future inheritance interest in his mother’s house, raise potential security concerns under the foreign influence guideline. However, those concerns are mitigated by his growing relationships and loyalties to the United States. Eligibility for security clearance access is granted.

Statement of the Case

On April 9, 2019, Applicant signed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). On May 9, 2019, Applicant was interviewed by an investigator from the Office of Personnel Management (OPM). The Department of Defense Counterintelligence and Security Agency (DCSA) could not make the preliminary affirmative findings required to grant a security clearance. The DCSA issued to Applicant a Statement of Reasons (SOR), dated January 6, 2021, detailing security concerns under the guideline for foreign influence (Guideline B). The action was taken under Executive Order (E.O.) 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 revised adjudicative guidelines (AG) effective in the DOD on June 8, 2017.

Applicant provided his notarized answer on February 20, 2021. The case was assigned to me on June 6, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 9, 2021, for a hearing on December 13, 2021. The hearing was held as scheduled. The Government's four exhibits (GE) 1-4 and Applicant's seven exhibits (AE) A-G were entered into evidence without objection. The record in this case closed on December 16, 2021 when DOHA received the transcript (Tr.) of the hearing.

Administrative Notice

The Government requested that I take administrative notice of certain relevant facts related to Iraq. The facts are limited to matters of general knowledge and not subject to reasonable dispute. The Government's administrative notice memorandum and source material is identified as Hearing Exhibit (HE) 1. Applicant had no administrative facts that he wanted me to take administrative notice of regarding the Republic of Iraq. (Tr. 11)

Findings of Fact

The SOR identifies six allegations under Guideline B (foreign influence). Applicant admitted all allegations. He noted that his potential inheritance of a house located on a parcel of land was less than \$400,000. (SOR 1.f) All references to the government exhibits shall be to the typed page numbers that are in the upper right corner or at the bottom of the page.

Applicant, 40 years old, was born in Iraq in 1981. He received his Iraqi high school diploma in July 2000, and an electrician's certificate that allowed him to avoid compulsory service in the Iraqi military. (GE 1 at 13; GE 2 at 4) He assumed financial responsibility for his mother and two sisters after his father died in a train accident in 2004. (Answer to SOR at 3) As shall be discussed below, from 2004 to late 2013, Applicant was an Iraqi police officer. He married his wife, an Iraqi citizen, in 2010. (GE 1 at 26) Their ceremony took place in Iraq. They immigrated to the United States after he received death threats in 2012. After his wife's cousin, an Iraqi linguist employed by the U.S. military, was assassinated by terrorists in September 2013, they immigrated to the United States later in the same month. (GE 2 at 5) Applicant's two children, seven and five years old, were born in the United States. His wife is also pregnant. He and his wife became U.S. citizens in 2019. She has been employed by a department store as a salesperson since 2017. (GE 1 at 30; Tr. 6, 16-21, 45)

Background

In 2003, the coalition forces began to hire Iraqis into linguist and police officer positions. A commander in the Iraqi police force, recognizing Applicant's language

skills, hired him and sent him to a neighboring middle eastern country for a six-month training course at the country's police academy. (Answer to SOR at 3; GE 2 at 1, 8; AE B2)

For the first five years of employment as a patrol officer, Applicant went on patrols with United States Army (USA), helping them remove improvised explosive devices (IEDs) from the roads. He also worked with them as a secondary linguist when their primary linguist was absent. (Tr. 32-33) In 2008, he was promoted to internal affairs of the Ministry of Interior, and ultimately promoted to detective in that division. He was assigned to the director's office where one of his responsibilities was to gather and marshal documents for the prime minister's review. In addition to resigning from the ministry because of his wife's cousin's assassination, he resigned from the ministry after receiving repeated death threats in 2012 from Iran proxies to leave his position because of his affiliation to the wrong religious faith. (Answer to SOR at 3; GE 2 at 4; (Tr. 32-37)

Applicant considered his collaborative Iraqi police work with the coalition forces and his cousin's assassination as two important factors that could qualify him for refugee status to increase his chances of immigrating to the United States. So he applied for that status through the International Organization for Migration (IOM). After many interviews at the United States (U.S.) Embassy in Iraq in 2013, Applicant's refugee status was approved, and he immigrated to United States in the same year. In 2014, he received U.S. permanent resident status. Applicant has not been back to Iraq since 2013, and has no intention of returning in the future. (GE 3 at 5; GE 4 at 2; Tr. 36, 46)

Between 2013 and March 2018, Applicant worked in the United States at three armed security positions and was a security manager at a reputable department store. He was fired from one of those positions for an arrest made without sufficient probable cause. The termination does not tarnish his employment history because he was immediately hired by a competitive department store's security team. (GE 1 at 17; GE 3 at 5) In August 2018, Applicant established a military supply business that designs and sells clothing and accessories to police and military personnel. (GE 2 at 2) For a period of time in 2019 that is not clear from Applicant's testimony, after receiving his U.S. citizenship in April 2019, and applying for his current linguist position, he applied for another linguist position and received an interim security clearance. Following training, he was sent to another U.S. state for supplemental training and then to Iraq under a six-month contract. However, the then-president of the United States downsized the unit Applicant was working for, and he was sent back to the United States in late 2019. (Tr. 47-48) Though he indicated he was scheduled to begin security training with the Department of State in early 2020, there is no indication from the record that his training was initiated or completed. Since June 2020, Applicant has been working as a security officer for a federal agency. (GE 1 at 15; GE 2 at 2, 3; GE 3 at 5; Tr. 21; answer to SOR at 3-4)

SOR 1.a – Applicant’s mother is 69 years old and has three children, two daughters and Applicant. She is a permanent U.S. resident, but still is an Iraqi citizen. She has been living with Applicant for the past four months. He has continued to provide her financial support since 2013, both in Iraq and the United States. She is retired from a clerk’s position in the Iraqi Ministry of Agriculture where she worked about 10 years. Applicant testified that she receives no pension because she did not work there 15 years and did not have three children. (Applicant must not have been considered one of her children because of his immigration to the United States in 2013.) She has cardiovascular problems. She intends to stay in this country. (GE 1 at 28; GE 2 at 14; GE 3 at 1; Tr. 22-24, 53-55)

SOR 1.b – Applicant’s oldest sister was born in Iraq in 1986 and is 35 years old. Her job as a bookkeeper at a courthouse connects her to a branch of the Iraqi government. She is not affiliated with any foreign military service. Her husband is a financial analyst with the court. She has two children. Applicant talks with her every 10 days, exchanging pleasantries and making inquiries about the kids. She knows he is a security guard, but does not know he is applying for a security clearance. Applicant offered to sponsor her U.S immigration. He saw this sister in 2013, the last time he was in Iraq before he immigrated to the United States. (GE 1 at 25-27, 33-34, 56; GE 3 at 2; Tr. 56-58)

SOR 1.c – Applicant’s younger sister was born in Iraq in 1989, and is 32 years old. She moved to the United States in 2014 and became a permanent resident. She is a married-housewife with two children. She never had any affiliation with any government or military. All her family members are now U.S. citizens. Her husband sells medical insurance. She is a housewife who never had an affiliation with any foreign government or military. (GE 3 at 2; Tr. 29-30, 58-59)

SOR 1.d – Applicant was a security officer in Iraq from April 2004 to September 2013. See discussion above. (GE 1 at 20-21; GE 2 at 4; GE 3 at 5; GE 4 at 2; answer to SOR at 3; Tr. 32-37)

SOR 1.e – Applicant’s friend, an Iraqi resident citizen, joined the Iraqi police department when Applicant did in 2004. They completed the same police academy training program after they joined the police. He has not seen his friend since he left the police in 2013. Except for monthly contact with his friend, Applicant has no contact with any other individuals he worked with in the Iraqi police force. In their telephone conversations, the topics of discussion are the welfare of each other and their families. Applicant loaned his friend \$300 in January 2019. Applicant testified that at his request, the friend returned the money to Applicant’s mother (SOR 1.a). The friend does not know that Applicant is applying for a security clearance. To reduce potential security concerns, after he received the SOR in January 2021, Applicant discontinued contact with his friend altogether. (GE 2 at 14; GE 3 at 6; Tr. 36-41, 64-68)

SOR 1.f – Before immigrating to the United States in 2013, Applicant contributed about \$60,000 to help his mother purchase a house in Iraq. Her investment in the house came from a monetary inheritance from Applicant's father. Applicant is eligible to inherit twice his two sisters' share of the house that had an approximate value of \$400,000 in April 2019. Based on his subjective belief in an overall negative change in the surrounding neighborhood, Applicant surmised that the value of the house has reduced to about \$150,000. He intended to use his property inheritance to invest in his clothing supply business and a down payment toward the purchase of a house in the United States. As mentioned in the background discussion above, he has no intention of returning to Iraq. The house is empty at the present time. (GE 2 at 15; Tr. 42-46, 68-74, 76-77)

Other than the house, Applicant has no other financial interests in Iraq. Though he did not respond to inquiries regarding ownership of U.S. stock investments, he did have a retirement account valued at about \$10,000, but he used the money to purchase a car. His wife has \$6,000 in her savings account. Their combined checking accounts total \$5,000. He has a mental budget that he and his wife apply to bills as they become due. Applicant voted in the last federal and gubernatorial election in 2021. (Tr. 77-81)

Applicant's allegiance and loyalty is only to the United States. He believes these are key factors in protecting his family. He signed an unofficial memorandum renouncing Iraqi citizenship. (GE 2 at 14-16; Tr. 46-49)

Character Evidence

On June 1, 2020, the employee relations department of one of Applicant's previous Iraqi employers, indicated by letter that Applicant's employment was his position was terminated as a result of a reduction. He was eligible for rehire. (AE B1)

A former senior law enforcement advisor indicated in letters of July 2020 and January 2014, that he was assigned to head of police recruitment in 2004, where he met Applicant. The law advisor extolled Applicant's work ethic and his practical approach to getting problems solved. He believes Applicant warrants a security position (AE B2, B6)

On October 24, 2019, one of the commanding officers of the coalition forces, commended Applicant for his linguist services from July-November 2019. For the four-month period, Applicant helped the coalition forces reinstate advisor operations in northwest Iraq. The author of this recommendation stated that he would take Applicant anywhere. Applicant received a certificate of appreciation on November 1, 2019. (AE B3, E1)

In an undated endorsement, another linguist reported that she met Applicant in 2019. She observed how he strived to support the USA in every way he

could. He always performed his work in a timely fashion and would voluntarily make himself available for jobs that other linguists declined. (AE B4)

In an undated letter, another linguist indicated he worked with Applicant for an unidentified period with in an Iraqi location. Applicant always showed professionalism in carrying out his assignments. His positive attitude at work justified his application for security clearance eligibility. (AE B5)

On October 19, 2021, Applicant received a certificate for completing a supervision and management course. (AE E2)

Administrative Notice – Republic of Iraq

Iraq is a parliamentary republic that continues to evolve into a stable country. The outcome of the 2014 parliamentary elections met international standards of fair elections and led to the peaceful transition of leadership from former Prime Minister Nouri al-Maliki to Prime Minister Haider al-Abadi.

In December 2019 because of the constant demand for changes in the Iraq political system, Prime Minister Adil Abd al-Mahdi resigned. A new prime minister was confirmed by the Iraq cabinet in May 2020. He promised to improve security and fight corruption. Several assassinations later in 2020 of protest leaders and a well-known researcher caused serious doubt in whether the new prime minister would be able to accomplish his objective.

The U.S. State Department warns U.S. citizens living in Iraq are at a high risk for kidnapping and terrorist violence. The U.S. Government considers the potential threats to U.S. government personnel in Iraq to be serious enough to require them to live and work under strict security guidelines.

A 2019 human rights report indicated that serious human rights problems are still widespread in Iraq. Sectarian hostility and corruption at all levels of government have diluted the Iraqi government's human rights protections. Other human rights-related problems include: dangerous conditions in prisons and detention facilities; arbitrary arrest and pretrial detention; limits on freedom of expression and assembly; and discrimination based on gender, race, and religion.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines, which are flexible rules of law, apply together with common sense and the general factors of 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.”

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 applicant or proven by Department Counsel. . .” The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Analysis

Foreign Influence

AG ¶ 6 sets forth the security under Guideline B:

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.

Conditions under AG ¶ 7 that could raise a security concern and may be disqualifying include:

- (a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; and
- (e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which

could subject the individual to a heightened risk of foreign influence or exploitation.

Contacts and ties to family members who are citizens of a foreign country do not automatically disqualify an applicant from security clearance access. As set forth under AG ¶ 7(a), the contacts are only disqualifying if they create a heightened risk of foreign exploitation. As set forth in AG ¶ 7(b), connections to family members are only disqualifying if they create a potential conflict of interest between Applicant's potential security duties and his desire to assist his foreign family members. Applicant's father passed away in 2004. After he immigrated to United States in September 2013, he contacted his mother almost daily and provided financial support to her in Iraq. After she immigrated to the United States and moved into Applicant's house in August 2021, he has continued to provide financial and emotional support. Even though she is still a citizen of Iraq, she raises less security concerns because she is now a permanent resident of the United States. Applicant's youngest sister generates even less concern as she and her entire family are now U.S. citizens. On the other hand, Applicant's oldest sister and his police friend are citizens and residents of Iraq. AG ¶¶ 7(a) and 7(b) apply. However, the disqualifying conditions are less relevant to the friend at present because Applicant stopped communicating with him about 10 months ago. AG ¶ 7(e) also applies to Applicant's future interest in the Iraqi house. Under one or more of the three above disqualifying conditions, terrorists or insurgents hostile to U.S interests and citizens, could exert pressure on his older sister, his law enforcement friend, or to a lesser degree, his mother, to compel Applicant to compromise classified or sensitive information.

Conditions under AG ¶ 8 that could mitigate security concerns include:

(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.

Applicant's contacts with his older sister are not casual and infrequent. However, the current interaction with the friend who is an Iraqi police officer, has been nonexistent since about January 2021. AG ¶ 8(c) has some application to the Iraqi police officer who Applicant no longer communicates with.

Applicant receives considerable mitigation under AG ¶ 8 (b). Because of his strong loyalty to the United States, he can be expected to resolve any conflict in favor of U.S interests. While he was an Iraqi police officer from 2004 to 2013, he assisted coalition forces in clearing dangerous ordinances from roads, and also performing linguistic services when the primary linguist was unavailable. Despite leaving Iraq under refugee status and in fear of his life in 2013, he returned to the country for a four-month period in 2019 to help coalition forces in a linguist and cultural advisor capacity, and performed commendably.

Applicant's inheritance interest in the Iraqi house is significant, particularly when juxtaposed to his small financial interests in the United States. However, based on Applicant's loyalty to the United States, I do not foresee the foreign property interest to be of such a size to effectively pressure or manipulate him to compromise U.S. interests.

Whole-Person Concept

I have examined the evidence under the foreign influence and foreign preference guidelines in the context of the nine general factors of the whole-person concept listed at AG ¶ 2(d):

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for access to classified information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

As addressed under foreign influence, Applicant's foreign inheritance interest is significant. However, I am confident Applicant can be expected to resolve any conflict of interest in favor of U.S. interests because: (1) after beginning his career as an Iraqi police officer in 2004, he spent considerable time with coalition forces improving safety and security in the country while providing *de facto* linguist duties; (2) he has lived in the United States since 2013; (3) after he became a U.S. citizen in

2019, he returned to Iraq to perform linguist and cultural advisor duties for coalition forces; and, (4) he currently resides in the United States with his wife, also a naturalized U.S. citizen, two children born in the United States, with a third child on the way, his mother, and his younger sister with her family. Considering the evidence from an overall commonsense point of view, Applicant has met his heavy burden of mitigating the security concerns based on the foreign influence guideline.

Formal Findings

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

- Paragraph 1 (Guideline B): FOR APPLICANT
- Subparagraphs 1.a-1.f: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information.

Paul J. Mason
Administrative Judge