



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



In the matter of:)
)
) ISCR Case No. 19-03562
)
Applicant for Security Clearance)

Appearances

For Government: Erin Thompson, Esq., Department Counsel
For Applicant: *Pro se*

04/21/2022

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline B, foreign influence. Eligibility for access to classified information is denied.

Statement of the Case

On April 22, 2020, the Defense Counterintelligence and Security Agency issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on February 6, 2021, and requested a hearing before an administrative judge. The case was assigned to me on February 18, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 15, 2022. I convened the hearing as scheduled on April 5, 2022. The Government offered

exhibits (GE) 1 and 2. There were no objections to the exhibits offered, and they were admitted into evidence. Applicant testified and did not offer documentary evidence. DOHA received the hearing transcript on April 13, 2022.

Request for Administrative Notice

The Government provided relevant documents (HE I) and requested administrative notice be taken of certain facts about Iraq. Without objection, I have taken administrative notice of the facts contained in the request. The facts are summarized in the written request and will not be repeated verbatim in this decision. Of particular note is the significant threat of terrorism and ongoing human rights problems in Iraq.

Findings of Fact

Applicant admitted all of the allegations in the SOR and they are incorporated in the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 56 years old. He was born in Iraq. In 1988, he earned a bachelor's of law degree from a university in Iraq. He married in 1996. His eldest child was born in Iraq. In 1999, Applicant refused to join the Ba'ath party in Iraq, subjecting him to possible imprisonment or death by the Saddam Hussein regime. That same year Applicant, his wife who was pregnant at the time, and their child fled Iraq to Syria where they were refugees. His second child was born in Syria. In March 2001, through a United Nations program, he and his family immigrated to the United States. He has worked for different federal contractors, as a teacher of Arabic languages, since 2009, and has worked for his current employer, also a defense contractor, since 2017. (Transcript (Tr.) 20-26)

Applicant and his family became naturalized U.S. citizens in March 2001. He disclosed on his October 2015 security clearance application (SCA) that he does not possess an Iraqi passport because of his escape to Syria. He does possess a U.S. passport. During his background interview with a government investigator he stated that he maintains dual citizenship with the United States and Iraq. At his hearing, he confirmed he is a dual citizen and he intends to maintain his Iraqi citizenship so he can retain his right to inherit family property that was left to him and his siblings by their father who passed away about 20 years ago. His brother currently lives in the house rent-free. Under Shi'a law the men are entitled to an equal share and the women are entitled to a half share of the proceeds of the house. He estimated the house was worth about \$500,000. (Tr. 44-54)

Applicant has three sisters and a brother who are citizens and residents of Iraq. He has asked his brother to sell the house so they can split the proceeds in accordance with the law. His sisters also want the brother to sell the house, so they can receive their inheritance. Applicant stated that he has asked his brother to complete the sale in the next one to two years. He told him if he has financial difficulty after selling the house, he will help him out, but it is not fair he has lived in the house for so long and deprived the

siblings of their inheritance. If his brother refuses, he will have to take him to court. He would prefer not to have to go to court. Applicant testified that he will maintain his citizenship ties to Iraq until after his brother resolves the house issue. He does not know what he will do regarding his citizenship when the house issue is resolved. (Tr. 26-30, 44-54; GE 1)

Applicant's brother is a retired port employee. His eldest sister is a widow with grown children, who works for a university library. His middle sister is a principal of a high school, and his youngest sister is a homemaker. His siblings all have families. Applicant helps his siblings financially when they need it. He explained that their income is significantly less than he earns. He helps his eldest sister the most. Her husband was assassinated by terrorists in 2005. None of his family have visited him in the United States. The SOR alleged that Applicant's father-in-law is a citizen and resident of Iraq. He passed away about two years ago. (Tr. 26-32)

Applicant returned to Iraq with his family in 2004 so they could visit both his and his wife's family. He again took his family to Iraq in 2009 to visit family. He went back on his own in 2013, 2017, 2019, and December of 2021. His purpose was to visit his family and friends. He also stays in regular contact with his family by phone. He has friends and colleagues that work in the legal system, including attorneys and judges, with whom he worked for ten years. He also visits them while he is in Iraq. (Tr. 27-34)

Applicant testified that his siblings do not know what his job is in the United States. He intentionally shields them from this knowledge to keep them safe. He tells them he is a teacher at a school. He does not disclose to any of his Iraqi friends that he works as a teacher for a defense contractor. He believes his family and friends are now safe in Iraq, but he wants to ensure their continued safety. He stated there is still a concern from rogue militia, so the best way to keep his family safe is to not tell them anything about his job. (Tr. 60-63)

Applicant was asked if he has a concern about people in Iraq knowing how he escaped to Syria. He stated he does not share his story with anyone there. His family knows how he left, but no one else. When he visits Iraq, the people in the neighborhood where he used to live no longer recognize him. His colleagues at the court and friends recognize him and he engages with them when he is visiting the country. (Tr. 60-63)

Applicant was a lawyer in Iraq. When Saddam Hussein was in power, Applicant's name was removed from the active lawyer rolls. In 2009, when he returned to Iraq, he petitioned to be reinstated. His petition was granted and since then Applicant has paid the annual membership fees to maintain his law license there. He sends the money to his sister, who then gives it to his friends who then pay the dues. He intends to maintain his law license in the future. (Tr. 34-38)

In 2008, Applicant and his family were provided with a house from Habitat for Humanity. He is required to pay the interest-free mortgage on the home for 20 years. Once he completes this period of payments he will own the house outright. He stated the

value of the house is about \$230,000 and he owes about \$40,000. He currently earns about \$47,000 and his wife, who is a school secretary, earns about \$23,000. His older child graduated from college and lives at home. His younger child is attending college, and also lives at home. They received scholarships to fund their education. (Tr. 38-41, 48-49)

Applicant plans to retire in the United States. He is grateful and loyal to the United States for accepting his family as immigrants. In 2005, he was asked by a representative of the United Nations to help Iraqis living in the United States participate in the voting process in their country's election. He was a paid full-time worker and helped in various capacities. He voted in this election and was not yet a citizen of the United States. He again voted in the Iraqi elections in 2014, while living in the United States, and subsequent to becoming a naturalized U.S. citizen, in hopes of improving the country. (Tr. 54-59)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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

A person who seeks access to classified information 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 that an applicant may deliberately or inadvertently fail to 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 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

Guideline B: Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they resulted 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 it associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and the following are potentially applicable:

(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; and

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the

individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

AG ¶ 7(a) and 7(f) require evidence of a “heightened risk.” The “heightened risk” required to raise these disqualifying conditions is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant’s family ties to a foreign country as well as each individual family tie must be considered.

Applicant’s brother and three sisters are citizens and residents of Iraq. Applicant’s brother is a retired port worker. It is unknown if he receives a government pension. His eldest sister works in a university library, middle sister is a principal, and youngest sister is a homemaker. Applicant visits his family in Iraq regularly and is in regular contact with them by phone. Applicant has ties of affection to them. Applicant also regularly visits friends and colleagues from his legal profession when he visits Iraq. His family ties and relationship with friends and colleagues in Iraq create a heightened risk and a potential foreign influence concern.

Applicant inherited a share of his father’s house where his brother currently resides. He indicated he must retain his Iraqi citizenship in order to receive his share of the inheritance when his brother sells the house. It has been 20 years since his father passed away and although Applicant is pressuring his brother to resolve the inheritance, it is unclear when that will occur. Applicant intends to go to court if his brother does not share in the inheritance. This issue could create strife with his brother. Applicant maintains his law license in Iraq and intends to do so in the future. He has been paying his membership dues since approximately 2009. He visits his friends and colleagues at the court and maintains a personal and professional relationship with them when he is in Iraq. AG ¶ 7(a), 7(b) and 7(f) apply.

There is a significant threat of terrorism and ongoing human rights problems in Iraq. Applicant’s foreign contacts create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. The above disqualifying conditions have been raised by the evidence.

After the Government produced substantial evidence of those disqualifying conditions, the burden shifted to Applicant to rebut them or otherwise prove mitigation. The following mitigating conditions under AG ¶ 8 are potentially applicable:

- (a) the nature of the relationship 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 and interests of the U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interests in favor of the U.S. interests;

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation; and

(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 credibly and sincerely professed his appreciation and loyalty towards his adopted country. He is grateful for the opportunities that the United States has afforded him and his family. It is also evident that he has significant and deep ties to his family, friends, and colleagues in Iraq. He maintains regular communication, visits them, and helps his family financially when needed. He identifies himself as a dual-citizen of Iraq and is pursuing his inheritance from his father, and if necessary will go to court to enforce it. The property value is significant and important to Applicant. He is willing to pursue legal action against his brother if necessary. His ties are not casual and infrequent. AG ¶ 8(c) does not apply.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with relatives, friends, and colleagues who are citizens and residents of Iraq. Like every other resident of Iraq, any of his relatives who may be living in Iraq are at risk from terrorists. He intentionally shields them from information about him to protect them due to rogue elements that exist in the country.

I believe Applicant is a loyal American. He has worked in the United States for a defense contractor. However, his close family ties, close ties to the friends and colleagues in the legal community in Iraq, and his financial interests are such that he could be placed in a position of having to choose between them and the United States. His sense of loyalty towards his family, friends, and colleagues could create a conflict of interest. I have also considered Applicant's significant ties to the United States. It would be too great of a burden for Applicant to have to choose between protecting family and friends in Iraq over those of the United States. Applicant clearly identifies with his homeland and has diligently maintained both familial and professional relationships in Iraq. He continues to nurture his relationship with his professional colleagues in Iraq. He continues to pursue his rightful inheritance and is willing to take the matter to court if his brother fails to sell their father's property. This may cause a family strife and this conflict could make Applicant vulnerable and subject to pressure. I find the mitigating conditions under AG ¶¶ 8(a), 8(b) and 8(f) do not apply.

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 the 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(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the 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 some warrant additional comment.

Applicant is a loyal American citizen who is grateful to the United States for the opportunities it has provided to him and his family. He has worked for a defense contractor teaching Arabic languages. He is also a good family man and has stayed in close contact with his siblings in Iraq and has helped them financially over the years. He calls them on the phone regularly and visits them. He has stayed in contact with legal colleagues and friends in Iraq and also visits them. He maintains his law license in Iraq and intends to do so in the future. He also has a financial interest in the inheritance of his father's home, which his brother has lived in since his father's passing 20 years ago. Applicant clearly intends to ensure his inheritance interests and that of his sisters are fulfilled and is willing to take the matter to court. The continued terrorist threats and human rights issues in Iraq are significant. Applicant has not met his burden of persuasion. The security concerns raised under Guideline B, foreign influence are not mitigated.

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:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant

Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.e:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge