



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



In the matter of:)
)
-----) ISCR Case No. 19-01695
)
Applicant for Security Clearance)

Appearances

For Government: Daniel O'Reilly, Esq., Department Counsel
For Applicant: *Pro se.*

07/20/2022

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant did not mitigate foreign influence and personal conduct concerns. Eligibility for access to classified information or to hold a sensitive position is denied.

Statement of the Case

On November 22, 2019, the Department of Defense (DoD) Consolidated Central Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant detailing reasons why under the foreign influence and personal conduct guidelines the DoD could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); *Defense Industrial Personnel Security Clearance Review Program*, DoD Directive 5220.6 (January 2, 1992) (Directive); and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant responded to the SOR on March 3, 2020, and requested a hearing. The case was assigned to me on January 14, 2022. A hearing was scheduled for February 24, 2022, and heard on the scheduled date. At the hearing, the Government's case consisted of three exhibits (GEs 1-3) and a request for administrative notice of the country of Iraq. Department Counsel's official notice request covered 11 documents addressing the country of Iraq and the conditions that have plagued the country since the arrival of U.S. military forces in 2002. Administrative notice was taken of Government source documents covered by I through XI, without objection, in accordance with Federal Rules of Evidence 201(a). See ISCR Case No. 05-11292 at 4 (App. Bd. Apr. 12, 2007); ISCR Case No. 01-26893 at 10 n.2 (App. Bd. Oct. 16, 2020).

At my request, *sua sponte*, administrative notice was also taken, without objection, of a *U.S. Relations with Iraq Bilateral Relations Fact Sheet*, U.S. Dept. of State (April 2022). Applicant relied on seven exhibits and one witness (himself). The transcript (Tr.) was received on March 8, 2022.

Procedural Issues

Before the close of the hearing, Department Counsel asked to leave the record open to afford him the opportunity to supplement the record with an email summary of a LinkedIn personal profile of Applicant. For good cause shown, the Government was granted seven days to supplement the record. Applicant was afforded three days to respond. Within the time permitted, the Government supplemented the record with an email summary of Applicant's profile summary that included his claim of holding a bachelor's degree in computer engineering. The Government's post-hearing submission was admitted as GE 4.

Summary of Pleadings

Under Guideline B, Applicant allegedly (a) has a mother who is a citizen and resident of Iraq; b) has four sisters who citizens and residents of Iraq; (c) has two brothers who are citizens and residents of Iraq; and (d) has a spouse whose brother is a citizen and resident of Iraq. Allegedly, his spouse's brother currently serves as a Colonel in the Iraq military.

Under Guideline E, Applicant allegedly resigned from his employment with his prior employer in April 2016 when it was discovered that he had lied on his employment application by claiming to have a degree in computer science, when in fact he holds a degree in English Literature. Allegedly while visiting Iraq with his spouse and family in June 2012, he stole his wife's and children's passports in an attempt to prevent their return to the United States.

In his response to the SOR, Applicant admitted most of the allegations with explanations. He claimed to have very limited communications with members of his own family and virtually no communications with his sister's family since 2006 and denied having any relationship with his spouse's brother. And, for these reasons, he denied having any knowledge of his spouse's brother's whereabouts.

Addressing the Government's personal conduct concerns, Applicant claimed his false claim of holding a bachelor's degree in computer engineering, for which he was forced to resign in lieu of termination, was an isolated incident that occurred over eight years ago. He claimed to have voluntarily disclosed this information to the investigator who interviewed him. He claimed that he does not use the computer degree anymore in any of his job applications, or in trying to get a job with the engineering degree. He further claimed that he destroyed any copy of this degree in his possession. And, he claimed in his response that he "will not be able to use it in the future, for moral purpose and self-discipline."

In responding to the SOR allegations he stole the passports of his wife and children during their visit to Iraq in 2012, Applicant denied stealing his family's U.S. passports. He claimed to have a parental right to appropriate both of his children's passports, while visiting Iraq in 2012. While claiming, that there were too many factors involved in the incident to fully explain the circumstances involved in short time or in any short written statement, he went on to claim his wife had no court order granting her custody over the children, and as head of his household he had the legal as well as the personal right to keep his kids' documents with him. And, he claimed that his children are safe in the United States and living the American dream with his wife and himself.

Findings of Fact

Applicant is a 51-year-old civilian linguist employed by a defense contractor who seeks a security clearance. Allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in June 2004 and has three children from this marriage (ages 15 and 14). (GEs 1-2; Tr. 36-37) He earned a high school diploma in Iraq in July 1988 and a bachelor's degree in English literature in Iraq in September 1992. (GEs 1-2; Tr. 36)

Applicant immigrated to the United States in May 2008 and became a naturalized U.S. citizen in June 2013. (GEs 1-3; Tr. 37-39). Applicant reported no U.S. military service.

Before immigrating to the United States, Applicant served two years of compulsory military service in Iraq (April 1994-August 1995). (GE 1; Tr. 36) Between 2003 and 2008, Applicant served in Iraq's special coalition forces. (GEs 1-3 and AEs A-B)

Applicant's wife was born in Iraq and immigrated with him to the United States in May 2008. (GEs 1-2) Applicant's wife became a naturalized U.S. citizen in 2013 and remains a dual citizen of Iraq and the United States. (GEs 1-2) In May 2017, Applicant

renounced his Iraqi citizenship and relinquished his Iraqi passport. He has no affiliations or ties to the Iraqi military or government.

Since 2018, Applicant has been employed by his current employer as an Arab linguist. (GEs 1-2) He has continued to supplement his current employment with other self-employment jobs. (GE 2) Previously, he worked for himself and other employers in various types of telecommunication jobs. (Tr. 39-40) Applicant is sponsored by his current employer for a security clearance. (GE 1; Tr. 75)

While employed by a private employer between 2015 and 2016, Applicant was forced to resign by his employer for falsifying his employment application. With the help of his brother, who provided a fake transcript and diploma, Applicant falsely claimed to have a degree in computer engineering. (GE 2; Tr. 42-44) Applicant attributed his false claim of holding a degree in computer engineering to his belief that an engineering degree would enhance his ability to get the job he applied for. (GE 2; Tr. 45-46, 66-68)

Although, Applicant has not to date submitted any other employment application claiming an engineering degree (in lieu of the degree in English Literature he actually possesses), he has continued to include the engineering degree reference in his profile on his own LinkedIn website. (GE 4; Tr. 46-48, 68-69)

Applicant's family members

Applicant has a number of family members who are citizens and residents of Iraq. (GEs 1-2) While his father is deceased, his mother is a citizen and resident of Iraq. (GEs 1-3; Tr. 55) He also has four sisters and two brothers who are citizens and residents of Iraq. Both his mother-in-law and father-in-law are deceased. (GEs 1-2) However, he has a brother-in-law who is both a citizen and resident of Iraq and is a general in the Baghdad protection forces. (GEs 1-2; Tr. 60)

Applicant maintains frequent contact with his mother (twice weekly by phone or internet application). (GE 2; Tr. 55-56) His contacts with his sisters range between bi-weekly communications (with two of his sisters) to bi-monthly contacts with his two other sisters and two brothers residing in Iraq. (GE 2; Tr. 62) He maintains no contact with his brother-in-law. While unsure exactly how often his wife kept in touch with the brother-in-law, he estimated monthly or bi-monthly contacts. (Tr. 60-61) None of Applicant's immediate family members residing in Iraq have any known associations or ties to the Iraqi military or government.

During a visit to Iraq with his wife and children in June 2012, Applicant took possession of their passports before leaving Iraq without his wife and children. (GE 2) His given reason for withholding their passports was to prevent their return to the United States. (GE 2; Tr. 50-51) Six months later (in December 2012), with the help of a local U.S. police department, his wife was able to obtain a visa and make a safe return to the United States (GE 2; Tr. 50-52) Upon retrieving the U.S. passports of herself and her children, she returned to Iraq to gather her children and return them to the United States. (Tr. 51) He characterized his seizure of his family's passports as a sudden and

“poor decision” on his part. (Tr. 53) He was never charged with a crime, and he has since reconciled with his wife and children, who attend local schools in the United States. GE 2)

Applicant’s finances

Applicant has no property, bank accounts, or other financial interests in Iraq. (Tr. 63-64) He and his wife own a home in the United States, and Applicant has a 401(k) retirement account in the United States. (Tr. 64-65) His children are U.S. citizens and attend school in the United States. (Tr. 64) Applicant assured he has no interest in returning to Iraq.

Iraq’s country status

The Republic of Iraq is a constitutional parliamentary republic. The 2018 parliamentary elections generally satisfied international standards of free and fair elections and produced a peaceful transition of power from Prime Minister Haider al-Abadi to Adil Abd al-Mahdi. Widespread protests that began in October 2029 contributed to the resignation of al-Mahdi on December 1, 2019, and triggered a five-month period of government formation.

Mustafa al-Kadhimi (acting director of the Iraqi National Intelligence Service) received confirmation as prime minister by the Iraqi Council of Representatives on May 6, 2020 after committing to holding early elections in 2021, provide judicial accountability for violence during the previous year’s protests, bring all arms under state control, and address systemic and widespread corruption within Iraqi institutions. See Request for Administrative Notice, Republic of Iraq; *2020 Country Reports on Human Rights Practices for 2020: Iraq*, U.S. Dept. of State (March 2021)

The U.S. State Department’s travel advisory for Iraq is set at Level 4 and cautions U.S. citizens not to travel to Iraq due to Covid-19, terrorism, kidnapping, armed conflict, and the Mission’s limited capacity to provide support to U.S. citizens. According to the Travel Advisory, U.S. citizens in Iraq are considered to be at high risk for violence and kidnapping. Numerous terrorist groups are active in Iraq and regularly attack both Iraqi security forces and civilians. Anti-U.S. sectarian militias threaten U.S. citizens and Western companies throughout Iraq. Attacks by improvised explosive devices (IEDs) occur in many areas of the country (inclusive of Baghdad). See *Iraq Travel Advisory, supra*.

Terrorist activity in Iraq

Terrorism continues to be a major problem for Iraq. Beginning in early 2019, and last through mid-2020, the country experienced large-scale protests in Baghdad and several Shia-majority provinces, with reports of more than 500 civilians killed and 20,000 or more injured. Reports confirm that the Iraqi government took minimal steps to bring to justice those responsible for the violence. See Request for Administrative Notice, Republic of Iraq, *supra*; *2020 Country Reports on Human Rights Practices for*

2020: *Iraq, supra*. State Department reports confirm that between 2019 and 2021, attacks by militant terrorist groups operating in Iraq and counterattacks by U.S. military forces continued virtually unabated.

Despite improved government control over ISIS and other terrorist groups in Iraq, ISIS has continued to mount terrorist operations (albeit on a smaller scale), particularly in the North and West of the country, especially in rural areas where Iraqi security forces maintain a limited presence. See *Country Reports on Terrorism 2020 at 120, supra*. In 2020, terrorists conducted more than 100 IED (improvised explosive devices) attacks on Defeat-ISIS-contracted convoys and launched at least 40 indirect fire attacks against U.S. interests in Iraq. (*id.*) State Department reports caution that Iran will remain a problematic actor in Iraq, which will be the key battleground for Iran's mounting influence over the course of the next several years. See *id.* Iranian-supported Shia militias are expected to continue to pose the primary threat to U.S. personnel in Iraq.

Crime and Human Rights concerns

The U.S. State Department has assessed Baghdad as being a CRITICAL-threat location for terrorism directed at or affecting official U.S. Government interests. While terrorist attacks in Iraq have continued to decline, they have not completely subsided. Foreign and indigenous terrorist groups remain capable of conducting deadly attacks throughout the country, and continue to threaten expatriate personnel and visitors. See Request for Administrative Notice, Republic of Iraq; *supra*; *Iraq 2020 Crime & Safety Report: Baghdad*, U.S. Dept. of State (May 2020). Crime and lawlessness remain a serious threat throughout Iraq. In Baghdad, organized crime, uncontrolled militia activity, and corruption remain formidable obstacles to free enterprise and capital formation in general.

Human rights issues continue to plague Iraq. Significant human rights violations in Iraq include unlawful or arbitrary killings (including extrajudicial killings); forced disappearances; torture; arbitrary detention; harsh and life-threatening prison and detention center conditions; arbitrary or unlawful interference with privacy; the worst forms of restrictions on free expression, the press, and the internet (including violence against journalists); censorship, site blocking, and criminal libel; significant interference with the rights of peaceful assembly; legal restrictions on freedom of movement of women; threats of violence against internally displaced persons (IDPs) and returnee populations perceived to have been affiliated with the Islam State of Iraq and Syria (ISIS); and widespread official corruption. Government investigations of alleged abuses and atrocities perpetrated by Iraqi security forces rarely produce punishment of those found to be responsible. See *2020 Country Reports on Human Rights Practices: Iraq, supra*.

U.S. relations with Iraq

U.S. relations with Iraq have been generally good since Iraq's liberation from ISIS in 2017. See *U.S. Relations with Iraq, Bilateral Relations Fact Sheet*, U.S. Department of State (June 2022) Following the territorial defeat of ISIS in Iraq, the United States

increased its efforts to stabilize liberated areas as Iraq continues its efforts to achieve a sovereign, stable, and self-reliant country. (*id.*) Iraq continues to be an important partner for the United States as well as a voice of moderation and democracy in the Middle East. (*id.*) Iraq benefits from functioning government institutions (including an active legislature) and plays an increasingly constructive role in the region. The United States continues to engage constructively on diplomatic, political, economic, and security issues in accordance with its assumed responsibilities under the U.S.-Iraq Strategic Framework Agreement.

U.S. bilateral assistance to Iraq is primarily directed to Iraqi needs covering economic reform, assistance to vulnerable groups, human rights, and democracy and governance. See *U.S. Relations with Iraq, Bilateral Relations Fact Sheet. supra.* U.S. bilateral assistance to Iraq is broadly focused on bolstering Iraq's democratic institutions while preserving the strengths of the strategic, political, and economic U.S.-Iraq partnership in a rapidly changing Middle East region. Since 2014, the United States has contributed billions of dollars in humanitarian, demining, and stabilization aid to conflict-affected and displaced Iraqis. Included groups receiving support are communities recovering from genocide. (*id.*)

U.S. assistance efforts to Iraq includes major support for Iraq's security programs. See *U.S. Relations with Iraq, Bilateral Relations Fact Sheet. supra.* U.S. security assistance programs are designed to speed the development of a modern, accountable, fully sustainable, and professional Iraqi military capable of defending Iraq and its borders. (*id.*) U.S. assistance programs serve to promote civilian oversight of the country's military, adherence to the rule of law, and respect for human rights, while also providing for the increased capability of the military to respond to threats and conduct effective counter-terrorism operations. See *id.*

The Iraqi government has been very clear about its intentions to transition from a centrally run economy to one that is market oriented. See *U.S. Relations with Iraq, Bilateral Relations Fact Sheet. supra.* Investment in Iraq by U.S. companies has increased significantly over the last 10 years, and to promote continued investment in Iraq, the United States has designated Iraq as a beneficiary developing country under the Generalized System of Preferences program. Two-way trade in goods in 2021 totaled \$4.6 billion, with \$0.8 billion in U.S. exports to Iraq and \$3.8 billion of Iraqi exports to the United States (almost entirely consisting of crude oil).

Iraq cooperates with international organizations, including the United Nations, the International Monetary Fund, the World Bank, the International Organization for Migration, the International Labor Organization, and the Arab League. See *U.S. Relations with Iraq, Bilateral Relations Fact Sheet. supra.* Iraq is also a candidate for accession to the World Trade Organization.

Endorsements

Applicant received favorable endorsements from defense contractors who employed him during his work with Iraq's special coalition forces. (AEs E-G)

Supervisors who utilized his linguist services credited him with being extremely flexible, consistently hard-working, and supportive of his employers' assigned missions in the central and southern regions of Iraq. His program manager fully supported Applicant's 2007 application for a U.S. special immigrant visa. (AE G)

Policies

By virtue of the jurisprudential principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." As Commander in Chief, "the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. Eligibility for access to classified information may only be granted "upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns, if any.

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following ¶ 2(d) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

Foreign Influence

The Concern: 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 protected classified or sensitive information or is associated with a risk of terrorism. See AG ¶ 6.

Personal Conduct

The Concern: Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, and trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes . . . AG ¶ 15.

Burdens of Proof

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Security concerns are raised over Applicant’s having family members who are citizens and residents of Iraq. Additional security concerns are raised over Applicant’s falsification of his employment application with a prior defense contractor in 2016 that resulted in his resigning under threat of termination as the result of his employer finding that he had falsely claimed a degree in computer engineering. Further security concerns are raised over Applicant’s taking the U.S. passports of his wife and children during a family visit to Iraq in June 2012 in an attempt to prevent their return to the United States.

The status of Applicant’s mother, siblings, and brother-in-law as citizens and residents of Iraq raise serious national security questions about Applicant’s being placed in a position in which he could be manipulated, pressured, or coerced by Iraqi military and terrorist organizations operating in Iraq. These concerns present heightened security risks covered by two disqualifying conditions. (DC) ¶ 7(a) of the AGs for foreign influence: “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 DC ¶ 7(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,” apply to Applicant’s situation.

Generally, the AGs governing collateral clearances do not dictate *per se* results or mandate particular outcomes for applicants with relationships and contacts with persons who are citizens and residents of foreign countries in general. What is considered to be an acceptable risk in one country may not be in another. The

geopolitical aims and policies of the particular country (in this case Iraq) do matter. See ISCR Case No. 06-24575 at 4 (App. Bd. Nov. 9, 2007)

Summarized, the AGs do take into account the country's demonstrated relations with the United States as an important consideration in gauging whether the particular relative, friend, or contact with citizenship and residency elsewhere, create a heightened security risk. Iraq is a country occupied by terrorist organizations and is considered a country with a poor human rights record and one that is unsafe for travel by U.S. citizens despite the country's having generally positive bilateral relations with the United States.

Appeal Board precedents hold that there is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of his or her spouse. ISCR Case No. 17-04208 at 4 (App. Bd. Aug. 7, 2019); ISCR Case no. 12-00084 at 2 (App. Bd. May 22, 2014); ISCR Case No. 10-09986 at 3 (App. Bd. Dec. 15 2011). Infrequency of contact with the family member (as is the case with Applicant's brother-in-law) is not necessarily enough to rebut the presumption an applicant has ties of affection for, or obligation to, his or her own immediate family, as well as his or her spouse's family. See ISCR Case No. 17-01979 at 4 (App. Bd. July 31, 2019).

Without more information from Applicant about the status of his family members in Iraq and his personal relationships and contacts with them, none of the potentially available mitigating conditions are applicable to his situation. Iraq remains a country with heightened security risks that require a heavy burden of proof from Applicant to demonstrate that neither he nor his Iraqi family members are subject to influence by the Iraqi military or terrorist organizations operating within Iraq. See ISCR Case No. 06-24575, *supra*.

Personal conduct concerns

In his 2016 employment application with a prior employer, Applicant falsely claimed to have a bachelor's degree in computer engineering from an Iraqi university, which he did not have. When his employer discovered his false educational claim, it confronted Applicant with its findings of his falsification and forced him to resign under threat of involuntary termination. Despite assurances of avoiding any use of his false computer engineering degree in other U.S. employment applications, he has continued to claim a computer engineering degree in his LinkedIn profile. Applicant's falsification of his employment application with his previous employer warrants the application of DC ¶ 16 (b), "deliberately providing false or misleading information, or concealing relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative."

Applicant's falsely claiming to possess a degree in computer engineering which he did not have and his failure to correct the falsification with the profile he maintains on his LinkedIn account until confronted at hearing precludes his taking advantage of any potentially available mitigating conditions. His hearing correction after being confronted

by Department Counsel does not meet either the prompt or good-faith prongs of MC ¶ 17(a), “the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.”

In a previous Appeal Board case with similar timing issues, the Appeal Board held that an applicant who failed to fully disclose her illegal drug use history in two previously completed security clearance applications and opened up voluntarily late in an ensuing interview subsequently conducted by an agent of the Defense Investigative Service (DIS) five months later, failed to satisfy the prompt prong of the potentially available mitigating condition. See DISCR Case No. 93-1390 at 5 (App. Bd. Jan. 27, 1995)

In the face of proven acts of falsification by Applicant in a 2016 employment application and failure to demonstrably correct his educational falsity until confronted at hearing before promising to delete it from his LinkedIn profile comes too late to meet the mitigating requirements of MC ¶ 17(a). His laudatory endorsements from his prior employers in Iraq are not enough to counter his material educational misstatements.

While this is not a close case on the issue of Applicant’s falsifying a prior employment application, even close cases must be resolved in the favor of the national security. See *Dept. of Navy v. Egan, supra*. Quite apart from any candor expectation the Government may have for the clearance holder employed by a defense contractor, the Government has the right to expect honesty and candor from the trust relationship it has with the clearance holder. See *Snepp v. United States*, 444 U.S. 507, 511n.6 (1980)

Other raised personal conduct concerns about Applicant’s withholding of the U.S. passports of his wife and children on a visit to Iraq in 2012, in an attempt to prevent them from returning to the United States is very concerning as well. The trust relationship that exists between a father and his wife and children is fundamental to the concept of the nuclear family, whether appraised under U.S. laws and customs or under the tenets of Sharia law that recognize the father’s primary place in the family hierarchy. Applicant’s breach of that trust responsibility without a worthy explanation or expression of contrition does not speak well for someone who seeks a position of trust with the U.S. Government. See *United States v. Snepp, supra*.

To Applicant’s credit, he has made apparent amends with his wife and family in the U.S. residence they currently reside in. Considering all of the facts and circumstances surrounding his withholding the passports of his wife and children while visiting Iraq in 2012, to include the more than ten years of elapsed time since the 2012 incident, and his contributions to Iraq coalition forces in 2003-2008, Applicant’s breach of trust incident can be considered an isolated breach of trust and good judgment and not reflective of his current regard for his wife and children.

Whole-person assessment

Whole-person assessment of Applicant’s clearance eligibility requires consideration of whether his family members who are citizens and residents of Iraq are

free from heightened risks of coercion, pressure, and influence from exploitation by Iraqi military and terrorist organizations operating in Iraq consistent with safeguarding U.S. security interests. Additional security concerns associated with Applicant's falsification of a 2016 employment application and misappropriating the U.S. passports of his wife and children during a trip to Iraq in 2012 must be assessed and evaluated for compatibility with holding a security clearance.

Taking into account Applicant's most recent contributions to the U.S. defense mission and his past support rendered to Iraq coalition forces in 2003-2008, neither the heightened risks associated with his family members in Iraq nor the falsifying of his 2016 employment application can be reconciled with the requirements for holding a security clearance. Applicant's withholding of his family's U.S. passports, while of considerable concern, is mitigated by the passage of time and his reconciliation with his wife and children.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude foreign influence and personal conduct security concerns are not mitigated. Eligibility for access to classified information is denied.

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:

Guideline B (FOREIGN INFLUENCE):	AGAINST APPLICANT
Subparagraphs 1.a- 1.e:	Against Applicant
Guideline E (PERSONAL CONDUCT):	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant

Conclusion

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

Roger C Wesley
Administrative Judge