



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 21-00787  
)  
Applicant for Security Clearance )

**Appearances**

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

07/19/2022

**Decision**

BENSON, Pamela C., Administrative Judge:

Applicant did not successfully mitigate the risks of foreign influence raised by his familial ties with Iraq. Eligibility for access to classified information is denied.

**Statement of the Case**

On June 18, 2021, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence). This action was taken under Executive Order (EO) 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 adjudicative guidelines implemented by the DOD on June 8, 2017. Applicant responded to the SOR and requested a hearing.

On April 7, 2022, a notice of hearing was issued, scheduling the hearing for April 27, 2022. The video-teleconference hearing proceeded as scheduled using Microsoft Teams. Department Counsel submitted three documents, which I admitted into evidence as Government Exhibits (GE) 1, 2, and 3, without objection. Department Counsel

submitted a request for administrative notice of facts concerning the Republic of Iraq with supporting documents. I admitted the entire packet as Administrative Notice (AN) I, without objection. Applicant testified but did not submit any documents. The hearing transcript was received on May 4, 2022.

### **Findings of Fact**

The SOR alleges foreign influence security concerns based on Applicant's mother-in-law (SOR ¶ 1.a.), sister-in-law, and four brothers-in-law (who are citizens and residents of Iraq). (SOR ¶ 1.b.) In his response to SOR, Applicant admitted all of the allegations under Guideline B. His admissions are incorporated herein as findings of fact. After a careful review of the pleadings, hearing transcript, and exhibits, I make the following findings of fact:

Applicant is 48 years old. He was born in Mosul, Iraq, and he obtained his bachelor's degree in that country in 1997. He entered the United States illegally in December 2001, and he was held in a detention center by U.S. immigration until his hearing in May 2002. He requested political asylum at his hearing due to threats and three detainments by members of the Ba'ath Party, of which he was not a member. His asylum was granted. Beginning in March 2007, he served in the U.S. Army National Guard as a military translator with the rank of Specialist (E-4). He deployed to Iraq in October 2008, and returned to the U.S. in June 2009. He received an honorable discharge in March 2010. He became a naturalized U.S. citizen in 2009. His current translator employment offer with a federal contractor is contingent based on his eligibility for a DOD security clearance. (GE 1, GE 2, GE 3; Tr. 18-23, 30-31, 52-53)

Applicant was hired by a federal contractor for a linguist position in August 2006 and was terminated in February 2007. He told his supervisor that he needed to be moved to another military base in Iraq because the current base was too dangerous. His supervisor told him he was needed at that base, but Applicant told him he could not stay there. Applicant was fired by his employer and sent home. He was also hired by another federal contractor in March 2010 to work in Iraq as a translator. He was fired by his employer in August 2010, for violation of company policy and creating a hostile workplace. Applicant admitted he was aware that he was not to have any type of relationship with any foreign nationals in Iraq, but he became romantically involved with an Iraqi woman. They discussed becoming engaged and eventually married. He failed to report his relationship to his employer. (Tr. 53-59; GE 2, GE 3)

In September 2010, he travelled to Damascus, Syria after his family arranged a marriage for him with an Iraqi woman. He married his new wife in Syria and sponsored her for a Visa to the U.S., which she entered in June 2011. When questioned by Department Counsel as to why he chose to travel to Syria to arrange a marriage with an Iraqi woman rather than marry a U.S. citizen, Applicant stated "in our culture, you have to marry [someone from the same tribe]." His wife is now a naturalized U.S. citizen, and they have two daughters, ages seven and ten months. His wife returned to Iraq to visit family in 2012 and 2015. He and his wife returned to Iraq in 2017 to attend the marriage of his

brother-in-law. They stayed at his mother-in-law's house. (Tr. 18-19, 24-29, 31-32, 43-44, 58-59)

Applicant's mother-in-law is a citizen and resident of Iraq. During his background interview in October 2017, he told the authorized DOD investigator that he had contact with her two times per week via telephone. He and his spouse regularly send her financial assistance, about \$250 every three or four months. She occasionally works as a housekeeper and is not affiliated with the Iraqi government or military. (Tr. 28, 36-37, 42, 50-51)

Applicant's spouse's two older brothers (B-in-law 1 and 2) are citizens and residents of Iraq. During his background interview in October 2017, he told the authorized DOD investigator that he and his wife have contact with them about every two or three months. One of her brothers is employed as a soldier with the Nineveh Protection Unit (NPU), which is affiliated with the Iraqi military. One of his wife's younger brothers (B-in-law 3) moved to Canada and married in 2019. He is an Iraqi citizen currently residing in Canada. Her other younger brother (B-in-law 4) and her sister (S-in-law) are citizens and residents of Iraq. Applicant reported to the investigator that he and his wife have contact with these family members weekly, and they are not affiliated with any foreign government or military. The investigator questioned Applicant as to why he failed to list his wife's siblings on the security clearance application (SCA) or during his counterintelligence (CI) interview in August 2017. Applicant stated that he intentionally failed to report these individuals because he did not want his security clearance investigation to take any longer than necessary. (GE 1, GE 2, GE 3; Tr. 37-41)

**Contact with: (M-in-law) (B-in-law 1) (B-in-law 2) (B-in-law 3) (B-in-law 4) (S-in-law)**

<b>SCA 8/2017</b>	Annually	Not reported	Not reported	Not reported	Not reported	Not reported
<b>CI interview 8/2017</b>	Annually	Not reported	Not reported	Not reported	Not reported	Not reported
<b>Bkground interview 10/2017</b>	Two times per week	Once every 3 months	Once every 2 months	Once every week	Once every week	Once every week
<b>Bkground interview 6/2018</b>	Not discussed	Once every 6 months	Once per year	Once every 6 months	Once per year	Once every six months

Applicant was interviewed again by two DOD authorized investigators in June 2018. There were discrepant facts reported in his previous background investigations that required additional information. During the course of the interview, the reporting investigator noticed that Applicant was getting irritable with their questions. Applicant repeatedly stated that the investigators were asking too many questions. Also, on a few occasions, he extended his arm and pointed his finger very close to an investigator's face, stating in a very loud voice, "You're asking too many questions." At one point during questioning, the investigator abruptly stopped the interview after Applicant got up from his chair shouting and displaying aggressive behavior. Applicant was told that if he did

not calm down, he would be escorted out of the facility. He was also given a ten-minute break to get his emotions under control before the interview continued. Applicant received the investigative reports from both background interviews. He certified with his signature that the investigative records were reported accurately. (GE 2; Tr. 46-50)

### **Administrative Notice**

I have taken administrative notice of the following facts concerning Iraq:

The Federal Republic of Iraq (Iraq) is a constitutional parliamentary republic. The U.S. Department of State warns U.S. citizens not to travel to Iraq due to terrorism and armed conflict. U.S. citizens in Iraq are at high risk for violence and kidnapping. Numerous terrorist and insurgent groups are active in Iraq and regularly attack both Iraqi security forces and civilians. The Islamic State in Iraq and Syria (ISIS), a designated terrorist organization, remains a threat to public safety in Iraq. Additionally, criminal gangs and local militia pose a potential threat to U.S. citizens. In February 2018, the U.S. Director of National Intelligence (DNI) concluded that, given the ongoing presence of ISIS and Iran-supported militants, Iraq will likely face a lengthy period of political turmoil and conflict. (AN I)

Iraq's most significant human rights abuses are largely fueled by the terrorist activities of ISIS; however, some Iraqi security forces were alleged to have engaged in unlawful killings, disappearances and extortion, torture, life-threatening conditions in detention and prison facilities, and arbitrary arrest and detention. (AN I)

The United States' commitment to Iraq is balanced against the inherent dangers of the ongoing conflict in Iraq to its citizens and residents from terrorists and significant human rights issues. (AN 1)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines 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.”

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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**

The security concern under this guideline is set out in AG ¶ 6 as follows:

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.

Two disqualifying conditions under this guideline (AG ¶ 7) are relevant to this case:

(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or

resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

(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.

"The United States has a compelling interest in protecting and safeguarding [sensitive] information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

The mere possession of close family ties with relatives living in Iraq is not, as a matter of law, disqualifying under Guideline B. However, if an applicant or his or her spouse has such a relationship with even one person living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 08-02864 at 4-5 (App. Bd. Dec. 29, 2009) (discussing problematic visits of applicant's father to Iran).

To establish AG ¶ 7(a), the Government must demonstrate a "heightened risk" of exploitation due to Applicant's contacts with his spouse's family members in Iraq, one who is employed by the NPU, a unit in the Iraqi military. Given the activities of the Iraqi government, terrorists, and significant human rights violations, I find the Government has established the requisite "heightened risk" and potential conflict of interest regarding Applicant's contacts with family members in Iraq. AG ¶¶ 7(a), and 7(b) apply.

The following mitigating conditions under this guideline (AG ¶ 8) are potentially relevant:

(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.

Not every foreign contact or tie presents the heightened risk under AG ¶ 7(a). The “heightened risk” denotes a risk greater than the normal risk inherent in having a family member or a spouse’s family member living under a foreign government. The nature and strength of the family ties or other foreign interests and the country involved (i.e., the nature of its government, its relationship with the United States, and its human rights record) are relevant in assessing whether there is a likelihood of vulnerability to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government; a family member is associated with, or dependent on, the foreign government; or the country is known to conduct intelligence operations against the United States. In considering the nature of the foreign government, the administrative judge must take into account any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

There is a rebuttable presumption that a person has ties of affection for, or obligation to, his or her immediate family members, and this presumption includes in-laws. See, e.g., ISCR Case No. 07-06030 at 3 (App. Bd. Jun. 19, 2008); ISCR Case No. 05-00939 at 4 (App. Bd. Oct. 3, 2007) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)).

Applicant has regular contact with his spouse’s family members living in Iraq, and he has frequent contact with his mother-in-law, sister-in-law, and a younger brother-in-law living in that country. Applicant and his spouse were born in Iraq, and he has a brother-in-law who is serving in the NPU, a unit in the Iraqi military. Applicant and his spouse provide financial support to his mother-in-law. Their financial support, trips, and frequent contacts with relatives in Iraq are manifestations of their care and concern for relatives living in that country.

I considered the totality of Applicant’s ties to Iraq, the nature of its government, its relationship with the United States, and its human rights record, all of which are relevant in assessing the likelihood that an applicant’s family members are vulnerable to government coercion. Applicant’s extended family members in Iraq “could be a means through which Applicant comes to the attention of those who seek U.S. information or technology and who would attempt to exert coercion upon him.” ADP Case No. 14-01655 at 3 (App. Bd. Dec. 9, 2015) (citing ISCR Case No. 14-02950 at 3 (App. Bd. May 14, 2015)). His relationships with relatives who are living in Iraq create a potential conflict of interest because terrorists could place pressure on his family in an effort to cause Applicant to compromise classified information. These relationships create “a heightened risk of foreign inducement, manipulation, pressure, or coercion” under AG ¶ 7.

Overall, the facts show there is a possibility that Applicant could be placed in a position of having to choose between the interests of his foreign family members and the interests of the United States. His ties to the United States are not enough to fully mitigate the risk of undue foreign influence. AG ¶¶ 8(a), 8(b), and 8(c) 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 relevant 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 adjudicative 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 and the factors in AG ¶ 2(d) in this whole-person analysis.

I considered Applicant's three years of honorable service to the U.S. Army National Guard, which is a tribute to his character. He also worked in Iraq as a linguist, and was subject to dangerous conditions in a combat zone on behalf of the DOD. I also had to weigh this against the discrepant information he provided about his spouse's foreign family members and the frequency of contact during the course of his investigation. The investigator questioned Applicant as to why he failed to list his wife's siblings on the SCA or during his CI interview in August 2017. Applicant stated that he intentionally failed to report these individuals because he did not want his security clearance investigation to take any longer than necessary. Of some concern was Applicant's aggressive and inappropriate conduct during his June 2018 background interview for a DOD security clearance. I am not confident about Applicant's credibility or that he would disclose information about a security violation if that disclosure might damage his own employment.

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. Applicant's connections to Iraq are substantial and ongoing, and they raise significant security matters. After a careful review of the documents and testimony in the record, I conclude foreign influence 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:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a. and 1.b:	Against Applicant

### **Conclusion**

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

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Pamela C. Benson  
Administrative Judge