



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 20-00657
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicholas Temple, Esq., Department Counsel
For Applicant: *Pro se*

09/15/2022

Decision

MALONE, Matthew E., Administrative Judge:

The security concerns raised by Applicant’s ties to family members and associates who are citizens of, and who reside in, Iraq are mitigated. His request for a security clearance is granted.

Statement of the Case

On March 21, 2017, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain eligibility for a security clearance required for his pending employment with a federal contractor. Based on the results of the ensuing background investigation, adjudicators at the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) could not determine, as required by Security Executive Agent Directive (SEAD) 4, Section E.4, and by DOD Directive

5220.6, as amended (Directive), Section 4.2, that it is clearly consistent with the interests of national security for Applicant to have a security clearance.

On May 14, 2020, the DCSA CAF issued to Applicant a Statement of Reasons (SOR). The SOR alleged facts that raise security concerns articulated in the adjudicative guidelines (AG) issued by the Director of National Intelligence on December 10, 2016, to be effective for all adjudications on or after June 8, 2017. Specifically, this case is governed by Guideline B (Foreign Influence).

Applicant timely responded to the SOR (Answer) and requested a hearing. On June 30, 2022, I convened a hearing using a video conferencing platform. The parties appeared as scheduled. Applicant testified but did not present any documentary evidence. I received a transcript of the hearing (Tr.) on July 12, 2022.

Department Counsel proffered Government Exhibits (GX) 1 – 7. GX 1 – 6 are substantive exhibits in support of the Government's case, all of which were admitted without objection. GX 7 is the Government's request that I take administrative notice of certain facts about Iraq. After giving Applicant an opportunity to comment on the information presented therein, I granted the Government's request and have included GX 7 in the record. I have considered that information as appropriate. (Tr. 28)

After the hearing, I held the record open so that Applicant could produce additional relevant information. He timely provided documents I have identified as Applicant Exhibits (AX) A and B. AX A consists of copies of 13 letters or memoranda of recommendation or commendation from various senior U.S. military officers; copies of three certificates of appreciation from U.S. military units; and photocopies of 12 "challenge coins" from different U.S. military units. The contents of AX A were issued to Applicant between August 2004 and January 2011. AX B is a copy of a vaccination certification, dated June 30, 2022, attesting to Applicant's status as being fully vaccinated against Covid-19. The record closed on June 30, 2022, when Department Counsel waived objection to AX A and B.

Findings of Fact

The SOR alleged that Applicant's mother (SOR 1.a), father (SOR 1.b), four brothers (SOR 1.c), and three sisters (SOR 1.f) are citizens and residents of Iraq. The SOR also alleged that one of his four brothers serves as a colonel in the Kurdish Forces in Iraq (SOR 1.d), and that another brother works for Iraqi Transportation Security Agency (ITSA) at an airport in northern Iraq (SOR 1.e). Applicant admitted with explanations all of the SOR allegations. (Answer) In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is 53 years old, single, and works as an electronics testing technician in a non-defense industry job. He is one of eight children (five boys, three girls), all of whom were born and raised in the Iraqi Kurdistan Region (IKR) of northern Iraq. He attended an

Iraqi university where he earned a bachelor's degree in electronic engineering in 1989. After a U.S.-led coalition defeated Iraq in the first Gulf War in 1991, Kurdish militias staged an uprising against the regime of Saddam Hussein. The uprising was brutally repressed by Iraqi forces. At that time, Applicant was serving a mandatory enlistment in the Iraqi army as required under the Hussein regime. Rather than participate in the Iraqi suppression of Kurdish forces, Applicant deserted from the Iraqi army and returned to Kurdistan at the outset of the uprising. After the subsequent establishment of a no-fly zone during NATO's Operation Northern Watch, he worked for one of several non-governmental organizations (NGO) that went to Iraq to build housing and provide shelter for Kurds and other ethnic minorities displaced by the uprising. However, between 1994 and 1997, civil war broke out among the Kurds. Military responses by the Iraqi army, as well as aggressions by Iranian-backed militia and terrorist organizations resulted in widespread loss of life throughout the region. (Answer; GX 1; GX 2; GX 3; Tr. 35 – 39)

In March 1997, Applicant was evacuated from Kurdistan as part of an airlift of Kurds who were at risk of harm from the Hussein regime because of their work with NGOs. As part of Operation Pacific Haven, he was transported via Turkey to the U.S. territory of Guam. In December 1997, he was relocated to the continental United States and was granted refugee status. He became a naturalized U.S. citizen in 2007. When Applicant was evacuated from the IKR, he was told he could bring his parents and those of his siblings who were younger than 21 years old. Rather than break up the family any further, Applicant's father decided that only Applicant would leave and the rest of the family would stay together. Applicant testified that he would like to have sponsored his siblings to come to the United States after 2007, but he has mistakenly believed that they are still barred from emigrating from Iraq. Currently, his parents are too old and, in his father's case, too frail to move. His siblings all have families and careers of their own, so he now feels it does not make sense for them to move. Applicant also believes that the northern area of Iraq in which his family lives – Kurdistan – is stable and safe enough for them to remain there. (Answer; GX 1 – 4; GX 6; Tr. 40 – 42, 58 – 59)

In March 2004, Applicant was hired by a U.S. defense contractor for work as a linguist in support of U.S. military missions in Iraq following the 2003 U.S. invasion. He submitted an SF-85P application for a position of trust and his background was vetted by military counterintelligence personnel before he could be assigned to work with those units. For the next seven years, he worked closely with combat units assigned to a variety of missions in northern Iraq. He was not allowed to see his family when he was in Iraq, and he has always been aware of the risks involved should terrorist and other groups learn of his work with the U.S. military. He understands that if he were to return to Iraq for work in support of U.S. interests there, he again would not be able to visit his family there. (Answer; GX 2 – 6; Tr. 43 – 44, 61 – 62, 66)

Between 2004 and 2011, Applicant established an excellent reputation as an interpreter and cultural advisor as he assisted units at forward operating bases in regular contact with the enemy. His work also required him to interact with senior U.S. and Iraqi officials, assist in training of Iraqi security forces, and support U.S. and coalition efforts to

secure Iraq's borders with Turkey and Syria. Applicant often worked with units that came under enemy fire, and on at least two occasions, he was with units that sustained attacks using improvised explosive devices (IED). His work in support of U.S. interests was consistently and effusively characterized as professional, dedicated, and trustworthy in all respects. The certificates of appreciation and his receipt of challenge coins from units with whom he worked in combat zones reflect the appreciation of those commanders for Applicant's service. (GX 2 – 6; AX A; Tr. 43 – 46, 64 – 66)

Information about Applicant's relatives in the IKR has not changed since he first started working as a linguist for the U.S. military in 2004. All of them still reside in the same areas of northern Iraq which is governed by the Kurdistan Regional Government (KRG). One brother is a colonel in the Kurdish military forces, known as the Peshmerga, with whom U.S. and coalition forces started operating after the U.S. invasion of Iraq in 2003. Applicant thinks this brother will retire soon. Another brother works at an airport in the IKR for the Iraqi equivalent of the Transportation Security Agency (TSA). Employees of that agency are trained by their U.S. counterparts and the airport is considered a high-value target of terrorists. His two other brothers are teachers at a university in northern Iraq. Applicant's sister is a doctor in a hospital in northern Iraq; another is a teacher at a high school in northern Iraq; and the third is a stay-at-home mother who also cares for their parents. (Answer; GX 1 – 4; GX 6; GX 7; 33 – 35, 48 – 55)

Applicant speaks as often as he can with his parents because he is concerned for their health. His contact with his other siblings is less frequent, occurring by phone or email a few times each year. He has traveled back to Iraq and Kurdistan on several occasions to visit his parents since 2011. Applicant visited his parents in early 2022 because his father has been ill and he had been unable to visit for almost three years during the pandemic. When he visits, he stays with his parents and with his sister who lives with and cares for them. While there, he also visits with his siblings if they are available. He testified that after his parents die, he would have no interest in returning to Iraq. (Answer; GX 1; GX 6; Tr. 48 – 50, 56 – 57)

Applicant has lived in the same place in the United States since arriving from Guam almost 25 years ago. After working in support of U.S. interests in Iraq for long stretches between 2004 and 2011, Applicant's employer's contract ended and he returned permanently to the United States. Thereafter, he lived off his savings until January 2012, when he found employment in the electronics field. In June 2013, he purchased a home here, and all of his financial and property interests have always been in the United States as long as he has lived here. (GX 1; GX 6; Tr. 46 – 47)

To properly assess the security significance of these facts within the adjudicative guideline at issue, I have taken administrative notice of certain facts regarding Iraq as presented in GX 7. Additionally, much of the factual information presented in GX 1 – 6, AX A, and Applicant's Answer and testimony make clear that Applicant's family ties are located in the largely autonomous Kurdistan province of Iraq. Therefore, I *sua sponte* have taken notice of information about that region and its relationship with the central

government of Iraq that is available on the U.S. Department of State website (<https://www.state.gov>).

As to Iraq in general, of particular note is the continued inability of its freely-elected government to quell the violence and instability that persist in some parts of that country. These conditions are fueled and perpetrated by terrorist groups affiliated with Al-Qaeda and ISIS, as well as by Sunni insurgents and Iranian-backed Shiite militias. As a result, some parts of Iraq, mainly in areas south of Baghdad, such as Basrah, remain wholly unstable. Even the city of Baghdad is still subject to random acts of terrorist violence. U.S. citizens and interests in Iraq remain at high risk for kidnapping and terrorist violence. The U.S. State Department has advised against all individual travel to Iraq. The ability of the U.S. Embassy to provide consular services at the U.S. consulate in Basrah is extremely limited given the security environment, while the U.S. embassy in the IKR capital of Erbil remains open. While ISIS insurgent groups remain active in Iraq, their control over large swaths of Iraq has been diminished by U.S. and coalition efforts. Such groups regularly attack both Iraqi security forces and civilians. Anti-U.S. sectarian militias may also threaten U.S. citizens and western companies throughout Iraq. U.S. Government and western interests remain possible targets for attacks.

Additionally, there are significant human-rights problems in Iraq. Widespread corruption, as well as abuses by Iraqi security forces in response to acts of violence by terrorists and others, have undermined confidence in the Iraqi central government and its judiciary. Human-rights violations by Iraqi law enforcement are not uncommon and are not being addressed when identified. Those include killing, kidnapping, and extorting civilians, as well as inhumane conditions in detention and prison facilities, arbitrary arrest and lengthy pretrial detainment, denial of fair public trial, limits on freedom of expression, freedom of the press, censorship of religion, limits on peaceful assembly, and societal abuses of women. The various terrorist and militia organizations are also responsible for significant human rights abuses in Iraq.

As witnessed during the repression of Kurds by Saddam Hussein's regime in the late 1980s and early 1990s, the people of the IKR and the KRG itself have long been at odds with the Iraqi government. The KRG is largely autonomous and has established some measure of stability. The KRG employs the Peshmerga, in concert with U.S. military units, as its self-defense force against terrorist groups from Syria and (by proxy) Iran, as well as against aggressions from Turkey intended to counter what that government views as Kurdish terrorist activities. During Operation Iraqi Freedom, and in response to instabilities wrought by the Syrian civil war, U.S. and coalition forces have maintained a significant presence in Kurdistan, working with Peshmerga and other elements to control the influx of ISIS and like-minded entities from both Syria and Turkey. One observation by the State Department tends to support Applicant's claim that Kurdistan is relatively safer and more stable than the rest of Iraq; that is, that religious persecution and acts of violence are more prevalent in areas of Iraq outside the IKR, and the KRG does not enforce Iraqi laws enacted by the central Iraqi government aimed at prosecuting the practice of religions other than those recognized by the central government. The U.S.

continues to train and equip Kurdish and Iraqi forces to counter terrorist activities in the region. (GX 7, Item II; <https://www.state.gov/reports/2021-report-on-international-religious-freedom/iraq/>)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). (See Directive, 6.3) Decisions must also reflect consideration of the factors listed in ¶ 2(d) of the guidelines. Commonly referred to as the “whole-person” concept, those factors are:

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

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest for an applicant to either receive or continue to have access to classified information. (Department of the Navy v. Egan, 484 U.S. 518 (1988))

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion. (See Egan, 484 U.S. at 528, 531) A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. (See Egan; see also AG ¶ 2(b))

Analysis

Foreign Influence

The security concern under this guideline is stated at AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

Available information shows that Applicant has close ties to citizens of Iraq residing in Iraq. It also shows that he continues to be in contact with those persons, both electronically and in person. Overall, the political and military situation in Iraq continues to present a heightened risk that his relatives may be pressured or coerced by groups hostile to U.S. interests as a means of compromising Applicant's willingness and ability to protect sensitive U.S. information. The disqualifying condition at AG ¶ 7(a) applies:

contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

Additionally, because two of Applicant's brothers work for the KRG through the Peshmerga and the Iraqi TSA, the record supports application of AG ¶ 7(b):

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology.

By contrast, I have considered the following pertinent AG ¶ 8 mitigating conditions:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a

position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

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

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

The record does not support application of AG ¶ 8(c). Applicant's ties in Iraq, a country that presents a heightened risk of coercion, are familial and presumed to be close. Available information in support of that presumption includes frequent contact with and visits to his elderly parents in the IKR. Before and after the pandemic, he has traveled to Iraq to see them as often as possible, and he sees his siblings during those visits. He communicates with his siblings electronically a few times each year. He likely will not return to Iraq for family visits after his parents die, but that is a speculative consideration and not based on his current circumstances.

As to AG ¶¶ 8(a) and 8(b), all of Applicant's property, financial, and employment interests have been solely in the United States since he arrived here as a refugee in 1997. Although he did not present information about any ties to the community where he lives (e.g., participation in civic groups, religious activities, etc.), between 2004 and 2011, he established an impressive track record of protecting U.S. interests as a valuable member of U.S. military missions in Iraq and the IKR. Some of Applicant's work in those seven years placed him at great risk of bodily harm, and he was uniformly praised by U.S. military and other government officials for his support of and commitment to U.S. missions in Iraq. This information indicates a deep loyalty to the United States and creates a reasonable expectation that Applicant would resolve any conflict of interest in favor of the United States. Further, the information about Applicant's ties to persons in Iraq since he was first vetted for work as a linguist in 2004 does not appear to have changed. One must assume that Applicant again would work in the IKR but under circumstances on the ground that are, while still risky, generally more stable than in 2011. To that end, he again would be unable to visit his family, a restriction with which he complied during his previous work in Iraq. I conclude that application of AG ¶¶ 8(a) and 8(b) is supported by this record.

I also evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). Applicant's past work with the U.S. military was noteworthy, not only for the quality of his performance, but because of the active combat risks in which he often found himself. Given those circumstances, the letters of commendation and support from senior military and civilian officials carry significant weight in determining whether Applicant

should again be entrusted with access to sensitive information. Today, conditions in Iraq and the IKR, while still dangerous, are more stable than in 2011. Information about Applicant's family is unchanged since it was vetted by U.S. counterintelligence personnel in 2004. I have no doubts about Applicant's suitability for a security clearance. The record evidence as a whole supports a fair and commonsense decision in favor of the Applicant.

Formal Findings

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

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a – 1.f:	For Applicant

Conclusion

It is clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge