



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



In the matter of:)	
)	
)	ISCR Case No. 21-02137
)	
)	
Applicant for Security Clearance)	

Appearances

For Government:
Adrienne M. Driskill, Esquire, Department Counsel

For Applicant:
Alan V. Edmunds, Esquire

March 10, 2023

Decision

GLENDON, John Bayard, Administrative Judge:

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on October 28, 2020. On April 5, 2022, the Department of Defense (DoD) Consolidated Adjudications Facility issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline B (Foreign Influence). The action was taken under Executive Order 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 effective within the DoD after June 8, 2017.

Applicant answered the SOR in writing (Answer) on April 6, 2022, and requested a hearing before an administrative judge. He subsequently retained counsel, who

submitted a Notice of Representation signed by Applicant on May 16, 2022, On September 29, 2022, Department Counsel amended the SOR by adding a new allegation under a second adjudicative guideline, Guideline E (Personal Conduct). Applicant responded to the amendment on October 13, 2022 (Amendment Answer). Department Counsel was ready to proceed on September 29, 2022. The case was assigned to me on October 11, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on November 2, 2022. The case was heard on December 8, 2022. DOHA received the transcript (Tr.) of the hearing on December 15, 2022. (Tr. at 17.)

The Government offered Government Exhibits (GE) 1 through 4, which were admitted without objection. Department Counsel also provided a Request for Administrative Notice (AN), which is discussed below. Applicant offered 11 exhibits, marked as Applicant Exhibits (AE) A through K, which were also admitted without objection. At Applicant's request, I left the record open to provide him with the opportunity to supplement the record. On December 16, 2022, he timely submitted eight additional documents marked as AE L through AE S. AE L is Applicant's Request for Administrative Notice, which is also discussed below. AE M through S were admitted without objection. Applicant also testified on his own behalf. (Tr. at 6-12.)

Procedural Rulings

The Government requested in its AN that I take administrative notice of certain facts relating to the Republic of Iraq (Iraq). Department Counsel provided a five-page summary of those facts, supported by six U.S. Government documents pertaining to Iraq. The documents provide elaboration and context for the factual summary. I take administrative notice of certain facts included in the Government documents attached to AN. These facts are limited to matters of general knowledge, not subject to reasonable dispute. They are set forth in the Findings of Fact, below. As noted, Applicant also submitted a Request for Administrative Notice, a three-page document identified as AE L. I take administrative notice of certain facts, also set forth below, that are based upon U.S. Government documents cited therein. (Tr. at 11; AN; AE L.)

Findings of Fact

Applicant was born in Iraq and is 43 years old. He has never married and has no children. He received a high school diploma in Iraq in 1997 and earned a bachelor's degree in Iraq in 2002. In 2003, he was drafted into the Iraqi army. The Iraq War started shortly thereafter, and he served for 22 days before the war ended with the defeat of the Iraqi army and the overthrow of the Saddam Hussein government (Hussein Regime). He worked as a linguist for the U.S. military in Iraq in 2008-2009. In 2010, at the age of 35, he left his family behind and immigrated by himself to the United States. He had only one relative in the U.S., a cousin of his mother, and no friends. He became a naturalized U.S. citizen in 2015. He relinquished his Iraqi citizenship in 2016. He then worked as a linguist

for the U.S. military in Jordan in 2016-2017. He presently has a job opportunity to work for the U.S. Army in Kuwait as a linguist. He is seeking national security eligibility in connection with this employment. He is a first-time applicant for a clearance. (Tr. at 13-16, 22, 24, 29, 43-45, 49; GE 1, Sections 2, 9, 12, 17, 18.)

The SOR alleged that Applicant has five family members who are citizens and residents of Iraq: his mother (SOR ¶ 1.a), a brother (SOR ¶ 1.b), a sister (SOR ¶ 1.c), a sister-in-law (SOR ¶ 1.d), and an uncle (SOR ¶ 1.e). The SOR alleged that his brother works for the Iraqi Ministry of Oil as a mechanical engineer. (SOR ¶ 1.b.) His sister is alleged to work for the Iraqi Ministry of Construction as a Chief Engineer Assistant. (SOR ¶ 1.c.) His sister-in-law is alleged to work for the Ministry of Oil as a Chief Engineer. (SOR ¶ 1.d.) The SOR further alleged that his uncle served in the Iraqi Ministry of Defense as a colonel. (SOR ¶ 1.e.) The Government also alleged that Applicant will inherit properties in Iraq. One of the properties has a value of approximately U.S. \$500,000. (SOR ¶ 1.e.) In his Answer, Applicant admitted each of the SOR allegations.

As noted, the Government amended the SOR before the hearing date to add an allegation under Guideline E. In SOR ¶ 2.a, the Amendment alleged that Applicant was terminated by Company A in about January 2018 “for being rude and abusive to locally hired support staff and other employees.” The Amendment further alleged that he refused to sign termination paperwork, went Absent without Leave, and failed to demobilize at a U.S. Army base in the United States in accordance with company policy. Applicant denied the allegation in the Amendment Answer.

Paragraph 1 - Guideline B, Foreign Influence

The Government alleged in this paragraph that Applicant is ineligible for a clearance because he has contacts and property interests in Iraq that may create a divided allegiance or a conflict of interest, and be a national security concern. His contacts and property interests also potentially create a risk that Applicant 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 a foreign interest.

At the hearing, Applicant described his relationships with the five family members and the family properties identified in the SOR.

1.a: At the time of the hearing, Applicant was in Iraq taking care of his mother, who had recently had a foot amputated due to illness. His siblings were unable to take care of her because they have full-time jobs and families, and have no free time to do so. None of Applicant’s family members, including his mother, know that he is applying for a DoD security clearance. After becoming a U.S. Citizen in 2015, Applicant sponsored his mother to become a resident alien, which status was granted in February 2017. If Applicant returns to the United States without a clearance, he testified that his mother would return with him once she is able to travel. If Applicant is granted a clearance and

deploys to Kuwait, he is uncertain whether his mother would relocate to the United States at that point because she would be alone. (Tr. at 13-14, 17, 18-19, 21, 25-27, 47; AE J; AE K; AE K.)

1.b: Applicant and his brother do not have a close relationship. When Applicant is outside of Iraq, he only speaks with his brother once every six months. His brother does not know what Applicant does as a linguist. During his current stay in Iraq, Applicant sees his brother occasionally when Applicant needs help taking their mother to see her doctor. He does not see his brother otherwise. His brother has been working as a mechanical engineer for the Iraqi Ministry of Oil since before 2003, when the U.S. and its allies deposed Hussein Regime. His brother has never been a member of the Ba'ath Party. Applicant does not see his brother on holidays when he is in Iraq. (Tr. at 17-18, 26-27, 49-50.)

1.c: The above description of Applicant's relationship with his brother applies to his relationship with his sister, except she works for the Ministry of Construction as a chief engineer assistant. Applicant sees his sister less frequently than he sees his brother. (Tr. at 18-19, 26-27.)

1.d: Applicant's sister-in-law is the wife of his brother. Applicant has no contact with her. She works as a civil engineer for the Iraqi Ministry of Oil. (Tr. at 19, 28.)

1.e: Applicant's uncle was a colonel in the Iraqi Ministry of Defense and retired in 1989. Applicant has no contact with him. He last saw his uncle in 2013-2014 when Applicant's father was sick. His uncle served in the Iraqi Air Force. (Tr. at 19-20, 30-31.)

1.f: When Applicant's father died in 2015, Applicant's mother inherited her husband's property, which includes a building with four apartments. She also inherited the family home. The apartment building has an estimated value of about U.S. \$500,000; and the home is worth about U.S. \$300,000. Applicant and his two siblings will inherit the mother's properties when she dies. Applicant is unwilling to go through the paperwork involved in claiming his share of his mother's estate. He has no intention of asking his brother and sister to share one third of their inheritance with him. He explained that when he immigrated to the United States in 2010, he cut all of his ties to Iraq and now wants nothing to do with the country, his siblings, or the family property there, even though the family properties have a significant value. His attorney suggested that there are serious Iraqi governmental restrictions on removing funds from that country that would impede Applicant, as a U.S. citizen, from transferring funds out of Iraq if he were to liquidate his one-third share of the properties. (Tr. at 20, 22-23, 31-33, 48.)

Paragraph 2 – Guideline E, Personal Conduct

Applicant denies the allegation in SOR ¶ 2.a. The allegation is based upon a termination letter from Company A addressed to Applicant (GE 4) in which Company A accused Applicant of being rude and abusive to the local workers in Country X during his

deployment there in 2016-2017. He claimed that this was just an excuse used by his employer to remove him from his job. He explained that his problem with Company A began at a staff meeting with a U.S. Army officer who distributed a form regarding Company A's ethics and treatment of its linguists to be answered anonymously. One of the linguists spoke openly and praised Company A and his supervisor. Applicant raised his hand and said that he and others do not share that opinion. He then had a private conversation with the officer and spoke negatively about how Company A treated its linguists. (Tr. at 36-37; Amendment Answer.)

Later in December 2017, Applicant's supervisor received a call from Applicant about his comments to the Army officer and sent Applicant an email stating that the U.S. Army asked for his removal for being rude to local staff members. Applicant discussed his removal with his Army point of contact. The contact was surprised and denied that this came from Army. Applicant was subsequently advised that his removal order came directly from his employer and that the Army could do nothing to help him. He was advised that he would be transferred to Kuwait in three days. He arrived at the airport in Kuwait and no one was there to meet him. He had no directions as to where to go. After six hours of waiting in the airport, he reached a supervisor by email and the supervisor told him to take a bus to a U.S. base in Kuwait and wait for instructions. He had sent his bags to Company A's offices in Kuwait, and they were never delivered to him at the transient housing at the base. He kept asking representatives of Company A what they planned to do with him, and he was told that they would let him know. (Tr. 37-41; Amendment Answer.)

While he was in Kuwait, Applicant's brother called him and told him he needed to come to Iraq because their mother required immediate surgery and no one in the family could take care of her. When he spoke to Company A about his need for a four-day emergency leave, he was told that a U.S. Army officer would need to approve his request. Time passed without a response. Applicant felt that it was important for his mother that he be in Iraq for a few days to help with her care. He advised his employer that he was leaving for Iraq for a brief trip to care for his mother and would return. When he got to Iraq, he received a text message from his employer asking where he was. He responded that he was in Iraq as he had advised. He received a reply stating that he was fired, and he was instructed to turn in his badge. He sent his CAC to his employer. His mother's health worsened, and he stayed with her in Iraq. When she recovered from her surgery in 2018, Applicant and his mother returned to the United States. His mother eventually travelled back to Iraq and Applicant joined her in December 2021, when her health again required his assistance. (Tr. at 41-44; Amendment Answer.)

Mitigation and Whole-Person Evidence

Applicant testified with sincerity that at the start of the coalition's war to overthrow the Hussein Regime in 2003, he felt that he was seeing the beginning of an important historical change, or in his words "the light at the end of the tunnel." Prior to that war, the future of the Iraqi people was uncertain. After the war, he was pleased to have the

opportunity to work as a linguist for the U.S. Army in 2008, to help his country transition from dictatorship to democracy and a better life for its citizens. Over time, he became disillusioned that the Iraqi people themselves were creating new problems both against the U.S. Government's efforts to create a functioning government and society, and against each other in religious strife. He felt unsafe and unhappy. His disillusionment ultimately led him to leave his family and the country of his birth to emigrate to the United States in 2010. (Tr. at 34-35; AE Q.)

Before immigrating, Applicant worked for Company A as a linguist for the U.S. Army in Iraq during the period August 2008 through September 2009. In that role, he would accompany U.S. troops on missions outside of their compound and risk his life as an unarmed linguist. He also translated sensitive military and police records for U.S. and Iraqi officials, and acted as an interpreter for military transition teams. (Tr. at 23-24; AE D; AE G.)

After immigrating, he worked in the United States in at least three jobs in the period 2012 to 2015. Applicant worked for Company A in a second deployment, this time in Country X, during the period September 2016 to January 2018. In that position, he worked with U.S. Army training teams as part of an operational engagement program training Country X police. His duties included translation work with the trainees and keeping local civilians out of harm's way during live-fire operations. The commanding officer wrote, in a Memorandum for Record, that Applicant "performed exceptionally well as a linguist during Entry Control Point training" and "contributed to [building a] strong relationship between the [Country X's forces] and the U.S. forces." (AE E, AE F.)

Applicant was issued a badge to enter his base in Iraq and a CAC to enter the base in Country X where he lived and worked. He never had any security issues. During his work for the U.S. Army in Iraq and Country X, or at any time thereafter, he never discussed his work as a contract linguist for the U.S. Army with any family members. No one in his family knows that he is seeking a DoD security clearance. (Tr. at 18, 23-24, 31.)

Iraq

Applicant has significant contacts with Iraq. Accordingly, it is appropriate to look at the current conditions in that country. Iraq is a constitutional parliamentary republic. Its most recent parliamentary elections were in October 2021. They were generally considered free and fair, and an improvement over the prior elections in 2018.

U.S. citizens in Iraq are at high risk of violence directed against them. The U.S. Department of State's Travel Advisory for Iraq urges U.S. citizens not to travel to Iraq due to terrorism, kidnapping, armed conflict, and civil unrest. According to a February 2022 assessment by the Office of the Director of National Intelligence, Iranian-supported proxies are capable of launching attacks against U.S. forces and persons in Iraq and Syria. Iran remains a problematic actor across the region with its backing of Iraqi Shia

militias, which are the primary threat to U.S. personnel in Iraq. Islamic State in Iraq and Syria (ISIS) is a designated terrorist organization and is active in Syria and near the Iraq border. Also, ISIS leaders remain committed to their vision of building a self-styled global caliphate headquartered in Iraq and Syria and are working to rebuild its capabilities.

ISIS and its associated terrorist groups indiscriminately commit attacks and violent atrocities in Iraq despite improved Iraqi government control. Although ISIS maintained its capability to conduct deadly terrorist attacks in Iraq, these attacks resulted in fewer casualties in 2020 than in previous recent years.

Significant human rights issues exist in Iraq. They range from unlawful and arbitrary killings, including extrajudicial killings by the Iraqi government and forced disappearances by the government, to serious restrictions on free expression and the media and serious government corruption.

The United States maintains vigorous and broad engagement with Iraq on diplomatic, political, economic, and security issues in accordance with the U.S.-Iraq Strategic Framework Agreement. The Agreement reflects the important relationship and common goals the two countries share.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 - Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in 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.

Guideline B sets forth nine conditions in AG ¶ 7 that could raise security concerns and may be disqualifying in this case. The following four conditions 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 or technology;

(e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion; 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.

Applicant has family contacts, connections, and valuable family properties in Iraq that raise all of the above security concerns. He often lives with his mother, either when he is caring for her in Iraq due to her medical condition or when they reside together in the United States. His future inheritance rights involve substantial property interests in Iraq. The administratively noticed country conditions in Iraq raise the security concerns to level of a heightened risk.

It needs to be noted that the mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. *See, e.g.,* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 at 3 (App. Bd. Feb. 8, 2001).

The evidence is sufficient to establish the above potentially disqualifying conditions, and shifts the burden to Applicant to mitigate the security concerns. AG ¶ 8 provides six conditions that could mitigate security concerns under Guideline B. The following four conditions have possible application in this case:

(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;

(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 has virtually no relationships with his five family members in Iraq with the exception of his mother, who lives with him part-time in the United States and is a U.S. permanent resident alien. He left his family in 2010 before his father died and, at age 35, he turned his back on them and his country of birth for a new life in the United States. The fact that his brother, sister, and sister-in-law are all employed by the Iraqi government, and his uncle was a senior officer of the Iraqi military under the Hussein Regime, however, raises his family profile and presents at least a risk that Applicant could be placed in a position of having to choose between the interests of his relatives and the interests of the United States. That risk does not rise to the level of being likely to arise, in part because his family members are unaware of the nature of his past and potentially future work for the U.S. Army and of the fact that he is applying for a DoD security clearance; but it cannot be confidently concluded that the risk is "unlikely." AG ¶ 8(a) is only partially established by the facts in this case.

There is no conflict of interest, however. Applicant's sense of loyalty or obligation to his family members in Iraq is minimal and his loyalties to his country of choice, the United States, are deep as first evidenced in 2007 by his service to the U.S. Army in Iraq as a linguist. Applicant's relationship with his mother comes closest to creating a potential conflict of interest. That potential concern is addressed by his prior service to the U.S.

Army. Applicant has established that he complied with security procedures and regulations in the context of dangerous, high-risk circumstances in which he made a significant contribution to national security. These circumstances give credibility to Applicant's assertion that he can be relied upon to recognize, resist, and report attempts at coercion or exploitation. See ISCR Case No. 06-25928 at 3 (App. Bd. Apr. 9, 2008). AG ¶ 8(b) is fully established.

As noted, Applicant has relationships with his family members in Iraq is limited, except his relationship with mother. He communicates with them infrequently and typically only in connection with his mother's health and care. His relationship with his mother, however, renders the mitigating condition in AG ¶ 8(c) only partially established.

AG ¶ 8(f) is fully established. Applicant's future property interests in his mother's estate upon her death is of no interest to Applicant. He intends to refuse his inheritance after his mother's death, rendering it unlikely that the inheritance will result in a future conflict. He credibly testified that he has no interest in his family property, and that property could not be used effectively to influence, manipulate, or pressure Applicant.

Based upon an overall view of the facts of this case and the mitigating conditions, Applicant has established mitigation of security concerns under Guideline B. Paragraph 1 is found for Applicant.

Paragraph 2 (Guideline E, Personal Conduct)

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 15, which reads in pertinent part:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personal security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

Guideline E sets forth seven conditions in AG ¶ 16 that could raise security concerns and may be disqualifying in this case. The following condition is potentially applicable:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information,

supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(2) any disruptive, violent, or other inappropriate behavior; and

(3) a pattern of dishonesty or rule violation.

As noted below, the whole-person evidence in this case does not support a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. Accordingly, disqualification under AG ¶ 16(d) has not been established.

Assuming *arguendo* that the Government's limited evidence supports an unfavorable whole-person assessment and possible disqualification under AG ¶ 16(d) has been established, then the burden shifts to Applicant to mitigate the security concerns. AG ¶ 17 provides six conditions that could mitigate security concerns under Guideline E. The following two conditions have possible application in this case:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(f) the information was unsubstantiated or from a source of questionable reliability.

Both of the above mitigating conditions have been established. Applicant's behavior was infrequent and happened under such unique circumstances as to be unlikely to recur. It does not cast doubt on his reliability, trustworthiness, or good judgment. Also, there is no evidence that the extent of any personal misconduct by Applicant was anything more than minor, *i.e.*, being "rude" in a military/police training environment. Moreover, Applicant's testimony denying the accusations of Company A against him was credible, rendering the one document in the record supporting the allegation as insufficient to substantiate the accusations. In addition, Company A treated Applicant poorly by sending him to Kuwait without any plans or oversight. Company A then failed to respond to Applicant's request for a brief period of emergency leave, which was then followed by his immediate termination. The facts support a conclusion that Company A's actions and unresponsiveness were deliberate with the intention of creating a pretext for terminating Applicant. His termination was in retaliation for his negative comments about his treatment as a linguist by his supervisors in Country X. Applicant has mitigated any such security concerns. Paragraph 2 is found in favor of Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's potential for national security eligibility 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 national security 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 pertinent facts and circumstances surrounding this case. Applicant has provided evidence of his strong ties to the United States even in the context of the limited number of years he has actually resided here and the lack of close friends and relatives in the United States, other than the Army soldiers with whom Applicant served. He has twice benefitted the national interests of the United States by volunteering to work for its military, first in Iraq and then in Country X. Now he wishes to work for the U.S. military in Kuwait and to use his experiences, skills, and education for the benefit of U.S. national security. He left the country of his birth after being disillusioned by the failure of its people to become a safe, cohesive society without sectarian violence led by armed militias. He maintains a residence in the United States, he pays taxes in the United States, and he has brought his mother to the United States to sponsor her for a Green Card, which permits her to live with him and for him to care for her in her old age. The allegation under Guideline E is nothing more than an unsubstantiated allegation of relatively minor wrongdoing, which even if true, does not outweigh the overwhelmingly favorable whole-person evidence in the record. Overall, the record evidence does not create any questions or doubts as to Applicant's present suitability for national security eligibility.

Formal Findings

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

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a through 1.F:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is granted.

JOHN BAYARD GLENDON
Administrative Judge