



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
)
[NAME REDACTED]) ISCR Case No. 22-01731
)
)
Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

03/31/2023

Decision

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns about foreign influence raised by his ties to Iraq. His request for eligibility for access to classified information is granted.

Statement of the Case

On August 6, 2021, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain eligibility for access to classified information as part of his employment with a federal contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Department of Defense Consolidated Adjudications Facility (DOD CAF) could not determine, as required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive), that it was clearly consistent with the interests of national security for Applicant to have access to classified information.

On September 19, 2022, the DOD CAF sent Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline B (Foreign Influence). This action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines implemented by the DOD on June 8, 2017.

Applicant timely responded to the SOR (Answer) and requested a decision without a hearing. As provided for by paragraph E3.1.7 of the Directive, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued a File of Relevant Material (FORM) that Applicant received on November 15, 2022. The FORM proffered four exhibits (Items 1 – 4) on which the Government relies to support the SOR allegations.

Attached to the FORM and its exhibits was an unmarked *Request for Administrative Notice, Republic of Iraq*. I have included it in the record as Hearing Exhibit (HX) 1. It consists of a six-page memorandum and six supporting documents labeled I through VI.

Applicant had 30 days from receipt of the FORM to object to any of the Government's exhibits or to provide other additional information. He timely responded to the FORM and submitted information in support of his case. Department Counsel waived objection to the admissibility of Applicant's response to the FORM (hereinafter "RTF"). Applicant did not otherwise comment on or object to the Government's exhibits. Accordingly, GX 1 – 4, HX 1, and the RTF became part of the record, which closed on December 14, 2022. I received the case for decision on January 26, 2023.

Findings of Fact

Under Guideline B, the SOR alleged that Applicant's parents (SOR 1.a) and two brothers (SOR 1.b) are citizens and residents of Iraq. It also alleged that his sister is a citizen and resident of Iraq who is employed by the Iraqi government (SOR 1.c). It was further alleged that Applicant's father-in-law is a citizen and resident of Iraq (SOR 1.d); that Applicant's two children are citizens of Iraq (SOR 1.e); and that Applicant owns residential property in Iraq (SOR 1.f). (FORM, Item 1)

In response to the SOR, Applicant admitted with explanations and comment all of the SOR allegations. (FORM, Item 2) In addition to the facts established by Applicant's admissions, and based on my review of the information presented in the FORM, I make the following findings of fact.

Applicant is a 41-year-old employee of a federal contractor, for whom he has worked since July 2021. He was born and raised in Iraq, where he completed his college education in June 2004. He and his wife, who also was born and raised in Iraq, were married in July 2006. They have two children, ages 15 and 10. Applicant, his wife, and their children are naturalized U.S. citizens. They have lived together in the United States

since immigrating from Iraq in 2014. SOR 1.e alleges that his children are Iraqi citizens. (FORM, Item 3; RTF)

Applicant became a naturalized U.S. citizen in July 2020. In his e-QIP, he did not provide naturalization information about his wife and children. In response to the FORM, he provided copies of their U.S. passports that were issued in August and September 2020, respectively. The SOR alleges that Applicant's children are Iraqi citizens, something he acknowledged may still be the case; however, it also is clear that they and their parents are U.S. citizens who have been living together and continuously in the United States for over eight years. SOR 1.e is resolved for Applicant. (FORM, Items 3 and 4; RTF)

Between April 2007 and November 2014, Applicant worked for an Iraqi bank. Starting in 2008, he was vetted for work at the bank's branch inside the U.S. Embassy in Baghdad's Green Zone. Applicant disclosed in his e-QIP that he was investigated and approved for access to the embassy. He also provided copies of U.S. government-issued identification cards he used for access to the Green Zone and the embassy itself. In June 2011, the embassy's Senior Financial Management Officer provided a memorandum in which he roundly praised Applicant's work as a point of contact between his staff and the Iraqi bank in the conduct of essential financial transactions and in working with Iraqi vendors in support of U.S. military requirements in Iraq. Applicant left his embassy position (it appears he remained with the bank until 2014) that same month after the contract between the bank and the U.S. Department of State was modified. When Applicant left the embassy, the U.S. Ambassador to Iraq presented him with a certificate of appreciation for his dedication to and support of the U.S. mission in Iraq. (FORM, Item 3; RTF)

Applicant immigrated to the United States on what Department Counsel termed "an unspecified visa" and "received Government financial support for refugees." (FORM at 2-3.) In response to the FORM, Applicant stated that he "came to the U.S. through the IOM program due to my job as a contractor with the U.S. government." (RTF) The IOM program to which he referred is the International Organization for Migration (<https://mena.iom.int/iraq>), a non-governmental organization (NGO) whose mission is to assist persons who must relocate after being displaced by conflict. It is likely that Applicant received assistance from this NGO or from the U.S. government in expediting his immigration to the United States.

After he arrived in the United States, and after a three-month period of unemployment, Applicant started working in the computer and information technology (IT) industry. From February 2015 to the present, he has been steadily employed in such jobs. In addition to his full-time jobs, between May 2015 and February 2019, he supplemented his income by working part-time in ridesharing jobs. In 2016, Applicant bought the house in the United States where he and his family still live. All of his personal, community, professional, and financial interests are in the neighborhood where he is raising his children. (FORM, Items 2 - 4; RTF)

Applicant's parents, two brothers, a sister, and his father-in-law reside in Iraq as Iraqi citizens. His father is a retired government employee, and his mother has never worked outside the home. Applicant speaks with them as often as daily. His sister is an employee of an Iraqi government agency. He speaks with her monthly or in person during visits to see his parents (Applicant has traveled to Iraq in 2016 and 2021). Applicant averred that his sister's work does not relate to any military, security, intelligence, or foreign relations interests by the Iraqi government. Applicant's brothers and his father-in-law, who is a physician, have no apparent connection to the Iraqi government. One brother works for a trade association, the other a car dealer. The record does not reflect what level of contact Applicant has with his brothers or with his father-in-law, either directly or through his wife. Applicant averred that none of his relatives in Iraq know that he is applying for a security clearance. They only know that he works in the IT field. (FORM, Items 2 – 4; RTF)

Prior to his departure from Iraq in 2014, Applicant started building a new house for his family; however, it was not completed until 2017. Applicant's parents moved into the house because theirs had been demolished, and they needed a place to live pending completion of construction of a new house. Applicant's parents and his brothers now live in the house. Applicant wants to bring his parents to live in the U.S. with him. To that end, his house in Iraq is now on the market. Applicant does not receive rent for the house and there is no indication in this record about its value. (FORM, Items 2 – 4; RTF)

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 HX 1. Iraq is a constitutional republic, and its most recent parliamentary elections in 2021 were assessed by European Union and United Nations observers to be free and fair. Nonetheless, as to Iraq in general, concerns remain over the continued inability of that 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.

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 AG ¶ 2(d). 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*; 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.

As to SOR 1.f, which alleges only that Applicant owns “residential property in Iraq,” the only possible Guideline B disqualifying condition pertinent to that allegation is at AG ¶ 7(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. (emphasis added)

Available information does not support show *any* value associated with Applicant’s property in Iraq, much that it is substantial. SOR 1.f is not established and is resolved for the Applicant.

Nonetheless, 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. 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 Applicant’s sister works for an agency within the Iraqi government, 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(a) and 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 a recent visit to Iraq to visit his parents. Nonetheless, balanced against the heightened risk presented by the state of affairs in Iraq is the information about Applicant's work in support of U.S. interests in Iraq and his circumstances as a naturalized U.S. citizen whose roots are wholly planted in the United States for most of the past ten years. That information supports application of AG ¶ 8(b) and is sufficient, on balance, to mitigate the security concerns established under AG ¶ 7.

In addition to my evaluation of the facts and my application of the appropriate adjudicative factors under Guideline B, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(d). Applicant was vetted as a trusted foreign national for work in the Green Zone and inside the U.S. embassy in Iraq. He established a record of trustworthiness and dedication in support of U.S. interests in a war zone that shows he will resolve any conflict of interest generated from his foreign ties in favor of the United States. 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 and 1.f: For Applicant

Conclusion

In light of all available information, it is clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for security clearance eligibility is granted.

MATTHEW E. MALONE
Administrative Judge