



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



In the matter of:)
)
) ISCR Case No. 22-00364
)
Applicant for Security Clearance)

Appearances

For Government: John Lynch, Esq., Department Counsel
For Applicant: Alan Edmunds, Esq.

04/25/2023

Decision

HYAMS, Ross D., Administrative Judge:

Applicant did not sufficiently mitigate the foreign influence security concerns arising from his foreign contacts and connections to Iraq. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 3, 2020. On April 5, 2022, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence. Applicant answered the SOR on April 26, 2022, and requested a hearing before an administrative judge. The case was assigned to me on November 17, 2022.

The hearing convened on January 10, 2023. Department Counsel submitted Government Exhibits (GE) 1 and 2, which were admitted in evidence without objection. Applicant did not present any documentation at the hearing, but included 10 exhibits attached to the answer.

Request for Administrative Notice

At Department Counsel's request, I took administrative notice of facts concerning Iraq. Department Counsel provided supporting documents that verify and provide context for those facts. They are detailed in the Government's administrative notice filing (AN) 1 and are included in the findings of fact.

Findings of Fact

In his answer, Applicant admitted SOR allegations ¶¶ 1.a-1.g, and denied SOR ¶ 1.h. His admissions are incorporated into the findings of fact. Based on my review of the pleadings, evidence submitted, and testimony, I make the following additional findings of fact:

Applicant is 40 years old. He has never been married and has no children. He earned a bachelor's degree in 2005. Since 2021 he has worked overseas as a civil engineer and functional manager for a government contractor. (Tr. 13-15; GE 1)

Applicant was born in Iraq and lived there until he was about 30 years old. After completing college in Iraq in 2005, he worked for an Iraqi company in the construction industry. In 2008, he started working for a construction company that serviced coalition military bases in Iraq. In 2010, he was threatened twice by unknown persons for working on coalition bases, and had to take safety precautions. In 2012, he was granted a special immigrant visa (SIV) for his work on coalition bases, and he immigrated to the United States. He was granted U.S. citizenship in 2019. (Tr. 15-77; Answer; GE 1)

From 2012 – 2018, Applicant worked for construction companies that sent him on assignments in various overseas locations, including Iraq, for varying amounts of time. He reported that these assignments usually lasted less than six months at a time. He worked in the U.S. from about 2018 – 2021, and then took a job overseas in the Middle East, where he continues to live and work. (Tr. 15-77; Answer; GE 1)

Applicant does not own a home or have a lease for a rental property in the United States. He asserted that he thinks of U.S. State A as home and has a driver's license from there. The license lists the address of a friend from whom Applicant claims to rent a room on occasion, when visiting the United States. However, in his testimony at the hearing, Applicant did not know the last name of this friend. Applicant does not have many persons in the United States with whom he maintains close and continuing contact. He has a U.S. bank account and a 401K retirement account, neither of which contains more than \$20,000. (Tr. 15-77; Answer; GE 1)

Applicant's mother and six siblings, and their immediate families, are citizens and residents of Iraq. Four siblings have jobs that are connected to the Iraqi government. In his SCA, Applicant reported regular and frequent contact with almost all of these immediate family members. In his testimony, he stated that he limited his communications with almost all of his family members after applying for a security clearance, because he

thought it would assist him in obtaining one. He claimed not to know what jobs certain family members had, or the jobs of their adult children, and he does not know if their employers are affiliated with the Iraqi government or military services. (Tr. 15-77; GE 1, 2)

The SOR alleges the following foreign influence concerns:

SOR ¶ 1.a alleges that Applicant's mother is a citizen and resident of Iraq. He admitted this allegation. (Tr. 15-58; Answer; GE 1, 2)

SOR ¶ 1.b alleges that Applicant's brother is a citizen and resident of Iraq, and is employed by a company owned and operated by the Iraqi government. He admitted this allegation. (Tr. 15-58; Answer; GE 1, 2)

SOR ¶ 1.c alleges that Applicant's brother is a citizen and resident of Iraq, and is employed by a company owned and operated by the Iraqi government. He admitted this allegation. (Tr. 15-58; Answer; GE 1, 2)

SOR ¶ 1.d alleges that Applicant's brother is a citizen and resident of Iraq. (Tr. 15-58; Answer; GE 1, 2)

SOR ¶ 1.e alleges that Applicant's sister is a citizen and resident of Iraq, and is employed by an Iraqi government ministry. He admitted this allegation. (Tr. 15-58; Answer; GE 1, 2)

SOR ¶ 1.f alleges that Applicant's sister is a citizen and resident of Iraq, and is employed by a company owned and operated by the Iraqi government. He admitted this allegation. (Tr. 15-58; Answer; GE 1, 2)

SOR ¶ 1.g alleges that Applicant's sister is a citizen and resident of Iraq. He admitted this allegation. (Tr. 15-58; Answer; GE 1, 2)

SOR ¶ 1.h alleges that Applicant has a financial interest, along with his siblings, in his family residence in Iraq, valued at about \$200,000. He denied this allegation. He stated that his sister is living with their mother at the residence, and she will inherit the home. (Tr. 15-58; Answer)

In his answer, Applicant included four character letters which state that he is a valued employee, reliable, trustworthy, and fit to hold a security clearance. (Answer)

Iraq

In AN 1, the Government included information from the U.S. Department of State as of September 2022, about the United States' relations with Iraq and the current conditions in that country. I take administrative notice of the following facts:

The U.S. Department of State has assessed Iraq as being a high threat, “Level 4: Do not travel” location due to terrorism, kidnapping, armed conflict, civil unrest, and limited ability to assist U.S. citizens in country. U.S. citizens in Iraq are at high risk for violence and kidnapping. Terrorist and insurgent groups regularly attack both Iraqi security forces and civilians. Anti-U.S. sectarian militias threaten U.S. citizens and Western companies throughout Iraq. Attacks using improvised explosive devices (IEDs) occur in many areas of the country, including Baghdad. Demonstrations, protests, and strikes occur frequently. These events can develop quickly without prior notification, often interrupting traffic, transportation, and other services; such events have the potential to turn violent. The travel warning as of the date of this decision remains the same.

The country experienced large-scale protests in Baghdad and several Shia-majority provinces beginning in 2019 and lasting through mid-2020, with reports of more than 500 civilians killed and 20,000 or more injured. During the year sporadic protests continued amid a campaign of targeted violence against activists. The government took minimal steps to bring to justice those responsible for the violence.

Terrorist groups and those inspired by such organizations are intent on attacking U.S. citizens abroad. Primary terrorist threats within Iraq included Islamic State in Iraq and Syria (ISIS) and Iran-aligned militia groups. ISIS is a designated terrorist organization, which is active in Syria and near the Iraq border. ISIS and its associated terrorist groups indiscriminately commit attacks and violent atrocities in Iraq despite improved Iraqi government control. ISIS, militia groups, and criminal gangs target U.S. citizens for attacks and hostage-taking.

There have been significant human rights issues in Iraq, including: credible reports of unlawful or arbitrary killings; extrajudicial killings and forced disappearances by the government; torture and cruel, inhumane, and degrading treatment by the government; and arbitrary arrest and detention.

Policies

This case is adjudicated 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 (AG), which became effective on June 8, 2017.

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

AG ¶ 6 details the security concern about "foreign contacts and interests" 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.

AG ¶ 7 indicates conditions that could raise a security concern and may be disqualifying in 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;

(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; 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.

The nature of a nation's government, its relationship with the United States, and its human-rights record are relevant in assessing the likelihood that an applicant's family members and foreign contacts are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member or friend is associated with or dependent upon the government, the country is known to conduct intelligence collection operations against the United States, or the foreign country is associated with a risk of terrorism.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified 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).

A heightened security risk in Iraq is established by the administratively noticed facts in the record. The security risks include the risk of terrorism and the human-rights records of this country.

Applicant's mother and six siblings, with whom he maintains close and continuing contact, are citizens and residents of Iraq, and four siblings have jobs that are connected to the Iraqi government. Applicant's longstanding connection to Iraq presents a conflict of interest. AG ¶¶ 7(a) and 7(b) apply to SOR ¶¶ 1.a-1.g.

SOR ¶ 1.h, which Applicant denies, concerns a \$200,000 property interest that Applicant allegedly holds in his family home in Iraq. The record evidence demonstrates that the home is owned by his mother, and that his sister stands to inherit it. SOR ¶ 1.h is therefore found for Applicant.

AG ¶ 8 lists conditions that could mitigate foreign influence security concerns, including:

(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 U.S.;

(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 or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Applicant has several immediate family members remaining in Iraq, with whom he maintains close and frequent contact. Iraq remains a heightened risk country. Applicant failed to provide sufficient evidence to find that it is unlikely that he 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 U.S. AG ¶ 8(a) does not apply.

Applicant failed to provide sufficient evidence to find that there is no conflict of interest between his sense of loyalty or obligation to his foreign contacts, his allegiance and connection to Iraq is minimal, and that he has deep and longstanding relationships and loyalties in the U.S. that he can be expected to resolve any conflict of interest in the favor of the U.S. interest. Even though Applicant earned a SIV to come to United States, he has longstanding personal and familial connections to Iraq. He spent three quarters of his life in Iraq, and after immigrating to the United States, he has spent a significant amount of time living and working overseas, including in Iraq. Further, his ties to the U.S. are comparatively limited. He owns no real property here. He recalled few details about his connections to the U.S. On balance, he did not provide sufficient evidence that AG ¶ 8(b) should apply to mitigate the security concerns established by his family members in Iraq.

Applicant failed to provide sufficient evidence to find that his contact or communication with foreign citizens is so casual or infrequent that there is little likelihood

that it could create a risk for foreign influence or exploitation. In his SCA, he reported maintaining frequent contact with most of his family members, and he continues to have a close bond of affection and obligation for them. His temporary limitation of communications with his family members during the processing of his security clearance does not alleviate these concerns. AG ¶ 8(c) does 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 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 considered his character letters. I have incorporated my comments under Guideline B in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility for a security clearance. He did not provide sufficient evidence to mitigate the security concerns under Guideline B arising from his foreign contacts and connections to Iraq.

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 – 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Ross D. Hyams
Administrative Judge