



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



In the matter of: )  
 )  
----- ) ISCR Case No. 22-00869  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Brittany White, Esq., Department Counsel  
For Applicant: *Pro se*

06/27/2023  
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**Decision**  
\_\_\_\_\_

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant mitigated foreign influence concerns relating to his connections to Iraq. Eligibility for access to classified information or to hold a sensitive position is granted.

**Statement of the Case**

On May 17, 2022, the Department of Defense (DoD) Consolidated Central Adjudication Facility (CAF) issued a statement of reasons (SOR) to Applicant detailing reasons why under the foreign influence guideline the DoD could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant responded to the SOR on June 25, 2022, and requested a hearing. The case was assigned to me on April 6, 2023. A hearing was scheduled for May 16, 2023, and heard on the scheduled date. At the hearing, the Government's case consisted of three exhibits. (GEs 1-3) Applicant relied on nine exhibits and one witness (herself). The transcript (Tr.) was received on September 4, 2019.

Besides its two exhibits, the Government requested administrative notice of facts contained in 10 attachments related to the country of Iraq. Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 16-02522 at 2-3 (App. Bd. July 12, 2017); ISCR Case No. 05-11292 at 4 n. 1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)). Administrative notice is appropriate for noticing facts or government reports that are well known. See Stein, *Administrative Law*, Sec. 25.01 (Bender & Co. 2006). For good cause shown, administrative notice was granted with respect to the above-named background reports addressing the geopolitical situation in Iraq.

Administrative notice was extended to the documents themselves, consistent with the provisions of Rule 201 of Fed. R. Evid. This notice did not foreclose Applicant from challenging the accuracy and reliability of the information contained in the reports addressing the current status of Iraq. Additional administrative notice was taken of *Background Note, Iraq*, at 3, U.S. Dept. of State (Feb. 2008); *World Factbook: Iraq*, U.S. Central Intelligence Agency (Feb. 2018), *Statement of the Record, Worldwide Threat Assessment of the U.S. Intelligence Community*, U.S. Director of National Intelligence (Jan. 2019), and *U.S. Relations with Iraq*, U.S. Department of State (June 2022).

### **Summary of Pleadings**

Under Guideline B, Applicant allegedly (a) served as an officer in the Iraqi army from about 1983 until his retirement at the rank of colonel in about 1998; (b) earned approximately \$900 monthly from the government of Iraq for his Iraqi army retirement; (c) has two brothers and seven sisters who are citizens and residents of Iraq, one of whom serves as a colonel in the Iraqi army; and (d) has a daughter who is a citizen and resident of Iraq who receives approximately \$900 a month from Applicant.

In his response to the SOR, Applicant admitted all of the allegations (inclusive of the allegations with clarifications and explanations). He claimed that his military service in the Iraqi army was undertaken during the Saddam Hussein regime and was mandatory. He also claimed to be an engineer by training who studied English literature in college. He claimed to have no contact with most of his brothers and sisters residing in Iraq. He further claimed that his daughter residing in Iraq automatically gets his Iraqi retirement pension from the Iraqi government.

### **Findings of Fact**

Applicant is a 62-year-old employee of a defense contractor who seeks a security clearance.

## Background

Applicant married his first wife in October 1994 and divorced her in December 1997. (GEs 1-2) He attributed his divorce to being married too young and growing apart. (GE 3) His former spouse passed away in 2000. (GEs 1-2; Tr. 39-40) He has one adult child (age 27) from his first marriage. (GEs 1-2) Applicant remarried in January 2007 and has three children and one stepchild from this marriage (ages 19, 15, 14, and 11). (GEs 1-3)

Applicant earned a master of science degree in 1983 in aerospace engineering from an accredited Iraqi university based on his documented coursework. (AEs F-G; Tr. 37) And, in 1999 he earned a bachelor's degree from an accredited Iraqi university in English literature (becoming fluent in the English language). (AE E) He served 15 years of mandatory active military service in the Iraqi army before retiring in October 1998 with the rank of colonel. (GEs 1-3) While in the Iraqi army, he had no combat experience. (GE 2)

Applicant immigrated to the United States in November 2013. (GEs 1-2 and AEs B and G) He became a naturalized U.S. citizen in June 2019 (GEs 1-3) He has a U.S. passport that was issued in July 2019 and is due to expire in July 2020. (GEs 1-2) His Iraqi passport issued in September 2011 and expired in September 2019. (GEs 1-2; Tr. 57) Applicant applied for and obtained his Iraqi passport to facilitate his travel to the United States, and he has not used this passport since becoming a naturalized U.S. citizen. (GE 3) Although, he remains a dual citizen of Iraq. (GEs 1-2; Tr. 57) Asked about his retirement intentions, Applicant professed his loyalty to the United States and his desire to retire in this country. (Tr. 61-62)

Applicant has no U.S. military service experience. While he has an earned Iraqi pension that pays him \$900 a month, the pension has been assigned to his daughter in Iraq who receives the pension benefits automatically from the Iraqi government without any intermediate transmissions routed through Applicant. (GEs 1-3; Tr. 40, 55-56) To date, Applicant's dispensed benefits to his daughter approximate \$75,600. (GE 2; Tr. 55) These pension benefits were used by his daughter to fund her college and living expenses. (GE 2)

Since May 2022, Applicant has been employed as a security officer for his current employer and seeks to use his language skills as a U.S. employee or contractor. (GE 2) He continues to be sponsored by a legal interpreting service contractor who has sponsored him for a security clearance since 2021. (Tr. 38-39) Between June 2014 and May 2023, he was employed as a linguist for a Catholic charity. (GE 1 and AE G; Tr. 37) He worked as a security officer between February 2014 and June 2014, and as a linguist between March 2009 and February 2014. (GEs 1-2)

Between 2003 and 2009, he held periodic linguist assignments with the Coalition Provisional Authority in Iraq. (GE 2 and G; Tr. 32) Applicant's translation work included translating U.S. contracts into Arabic. His linguist assignments included

translation work for a U.S. commander during the period of Operation Iraqi Freedom between March 2003 and January 2004. (AE A) His work for the U.S. commander in Iraq covered furnished insights into the cultural and political landscape of the region in Iraq subject to his commander's monitoring and control. (AE A) Applicant relinquished his linguist assignments in Iraq following the kidnapping of his younger brother in 2006 and threats on his own life by Iraqi military insurgents. (GE 2)

### **Family connections with Iraq**

Both of Applicant's parents are deceased. (GE 1) His current wife and children are naturalized citizens of the United States. (AE H) His wife is a homemaker with no current plans to enter the U.S. workforce. (GE 1-3) Applicant's father-in-law is deceased, and he maintains infrequent contact with his current wife's mother-in-law who is a citizen and resident of Iraq. (GEs 1-3)

Applicant has two brothers, seven sisters, and a 27-year old daughter from his first marriage, who are citizens and residents of Iraq. (GEs 1-3; Tr. 31-34, 46) His oldest brother is a colonel in the Iraqi army. (GEs 1-3; Tr. 30) Applicant has infrequent contact with his oldest brother, who is unaware of Applicant's application for a U.S. security clearance. (GE 3) Applicant' maintains quarterly contact with his youngest brother who was kidnapped by Iraqi security forces in 2003 during the Iraqi Freedom campaign. (GE 3; Tr. 43)

Applicant maintains infrequent contact with his seven sisters who reside in Iraq. (Tr. 51-57) Several of his sisters are teachers, and some of the children of his sisters are teachers as well. (Tr. 46-47) And, some of his sister's children are employed by Iraq's voluntary army. (Tr. 51-52) He has not provided financial support to any of his brothers or sisters. (Tr. 48-55) Four of his sisters applied for refugee status in the United States in 2016, and their applications are still pending. (Tr. 62-63) Currently, these four sisters reside outside the historical family home region. (Tr. 63)

While Applicant's daughter in Iraq is assigned his life-time Iraqi military pension rights, he provides no other financial benefits to her. (Tr. 56) Applicant expressed his willingness to renounce his Iraqi citizenship, even it meant eliminating his military pension rights. (Tr. 57-58)

Applicant assured that he has never provided any financial support to any of his siblings in Iraq and has no plans to do so in the future. (Tr. 46) None of his siblings (save for his older brother) have any affiliations or ties with the Iraqi government or military. Besides his contacts with his family members, Applicant has no other foreign contacts (GE 3; Tr.58)

### **Country Status of Iraq**

The Federal Republic of Iraq (Iraq) is a constitutional parliamentary republic. The outcome of the October 2021 parliamentary elections generally met international standards of free and fair elections. See Request for Administrative Notice-Federal

Republic of Iraq (Iraq) at 2 and *2021 Iraq Human rights Report* at 1; U.S. Department of State (April 2022). The elections were observed by the European Union and domestic civil society organizations and monitored by the United Nations Assistance Mission for Iraq. (id.) The 2021 elections were scheduled because of the widespread protests that began in October 2019 and led to the resignation of former prime minister Adil Abd al-Mahdi in December 2019. Parliament, in turn, confirmed Prime Minister Mustafa al-Kadhimi in May 2020.

In preparation for the 2021 national elections, Iraq adopted a new electoral law based on individual candidacy and local districts. The 2021 election law was designed to create new political opportunities for independents and members and protest movement that brought down the government formed after the 2018 election. See *Iraq and U.S. Policy*, (Congressional Research Service (May 2022)). Whether the election results and formation talks will reduce the formal influence of Iran-aligned groups who seek to revise or rescind Iraq's invitation to U.S. military advisors to remain in Iraq is unclear.

For historical perspective, in 2003, a U.S.-led coalition invaded Iraq and succeeded in removing Saddam Hussein and his Ba'athist regime from military and political power. See *the World Factbook: Iraq*, U.S. Central Intelligence Agency (Feb. 2018); *Background Note, Iraq*, at 3, U.S. Dept. of State (Feb. 2008). After two years of operations under a provisional authority, Iraq's new government assumed office in March 2006 (with the approval of the U.S. government), following free elections. (id)

Since March 2006, the government of Iraq has been comprised of a broad coalition of political alliances representing the Shiite, Sunni, and Kurdish blocs. See *the World Factbook: Iraq, supra*, at 2; *Background Note, Iraq, supra*, at 8. While elections have been held and concluded, none of the key constituent groups have been able to form a government, adopt an oil law, establish and maintain effective security throughout the provinces, or neutralize sectarian divisions. In this still very fragile political environment in Iraq, there are substantiated reports of human rights abuses that continue to underscore a still pervasive climate of tension and violence. See *Iraq 2021 Human Rights Report* at 2-3, U.S. Dept. of State (April 2022)

Post-COVID-19 protests intensified in May 2021, with demonstrators insisting that the government identify and prosecute suspects in a series of assassinations and kidnappings since 2020 of protest leaders, activists, and a prominent security researcher. The incidents have intensified public scrutiny of Prime Minister Al Kadhimi's credibility and his government's ability to act against armed groups operating outside state control. *Iraq and U.S. Public Policy,, supra*.

Whatever government is ultimately forged from the competing Iraqi political blocks is bound to test will U.S. continued security cooperation and other bilateral ties against the security risks posed by Iraq's cited persistence of patronage politics, corruption, oil dependence, and armed non-state actors. See Request for Administrative Notice, Iraq, *supra*, at 2; *Iraq and U.S. Policy*, at 1-2, U.S. Congressional Research Services (June 2021).

Iraq's economy continues to be dominated by the oil sector, as it has for the past half century since the completion of new pipelines to Lebanon in 1949, and to Syria in 1952. See *the World Factbook: Iraq, supra; Background Note, Iraq, supra*. As a result of the U.S.-led invasion in 2003, much of Iraq's oil-refining capabilities were shuttered. The rebuilding of oil infrastructure and utilities infrastructure has continued to expand since 2004 with U.S. aid and support, despite setbacks from insurgent activity.

Proposed oil revenue-sharing legislation among the three war-hardened ethno-sectarian divisions (Shia, Sunni, and Kurds) still awaits passage after four years of stalled negotiations, and at the moment, there are no good estimates of when such legislation will be approved and implemented. See *Statement of the Record, Worldwide Threat Assessment of the U.S. Intelligence Community*, U.S. Director of National Intelligence (Jan. 2019) For the foreseeable future, the national government can be expected to continue to seek the passage and implementation of a revenue sharing law to strengthen and encourage the development of this important sector.

Past budget laws passed by Iraq's national parliament requiring the KRG to contribute certain export earnings in the country's overall exports (a law that would seem to validate the KRG's ownership claims to Kirkuk oil) have never led federal authorities to export Kirkuk-produced oil. In so doing, Iraq's federal authorities have severely limited Iraq's northern export outlet via the Kurdish pipeline to Turkey. Breaking the oil-stalemate that existed for years between the KRG and Iraq's federal government can have major positive ramifications for not only Iraq and its oil exports, but for the United States and other Western interests as well.

### **Terrorism and human rights issues**

Despite recent developments in its security enforcement efforts, Iraq remains a very dangerous, volatile, and unpredictable country. The U.S. State Department continues to strongly warn U.S. citizens against traveling to Iraq. See Request for Administrative Notice, Iraq, at 3-5; *Iraq Travel Advisory*, U.S. Department of State (April 2022) The State Department assessed Iraq as being a critical-threat location for crime directed at or affecting official U.S. interests. See *Country Security Report* at 2-3, U.S. Dept of State (Sept. 2021) While crime statistics and crime reporting mechanisms are incomplete and inconsistent, the vast majority of individuals under contract with, or employed by, the U.S. Government in Iraq are required to travel with a protective security detail, so as to limit potential criminal threats against them. (id.)

Attacks against military and civilian targets throughout Iraq continue and include sites and facilities where foreign tourists frequently visit: hotels, restaurants, police stations, check points, foreign diplomatic missions, international organizations, and other locations with expatriate personnel. See Request for Administrative Notice, Iraq, *supra; Travel Advisory-Iraq, supra*, at 4-6. The U.S. Embassy's ability to provide consular services to U.S. citizens outside Baghdad is extremely limited under the security environment that still exists in Iraq. See Request for Administrative Notice, Iraq,

*supra*; *Country Information: Iraq*, U.S. Department of State (Nov. 2021); *Country Security Report, supra*.

Published annual threat assessments in 2022 predict Iranian-supported proxies will launch attacks against U.S. forces and persons in Iraq and Syria, and perhaps on other countries and regions. See Request for Administrative Notice, Iraq, *supra*, at 5; *Annual Threat Assessment of the U.S. Intelligence Community*, Office of the Director of National Intelligence at 2-3 (Feb. 2022)

In December 2015, President Obama signed into law the Visa Waiver Program Improvement and Terrorist Travel Protection Act of 2015, which amended the existing Waiver Program. See Request for Administrative Notice, *supra*, at 4-5. Under the 2015 amendment, citizens of Iran, Iraq, Sudan, and Syria are ineligible to travel or be admitted to the United States under the Visa Waiver Program. See Request for Administrative notice, Iraq, *supra*, at 6-7; *Visa Waiver Program*, U.S. Customs and Border Protection (May 2022)

Iraq's human rights record remains a poor one. Based on the U.S. State Department's most recent annual human rights report, violence continued throughout 2017-2018, largely fueled by the actions of the Islamic state in Iraq (ISIS). See Request for Administrative Notice, Iraq, *supra*, at 6; *Annual Threat Assessment of the U.S. Intelligence Community, supra*. After liberating all territory taken by ISIS by the end of 2017, Iraqi Security Forces (ISF) have continued to pursue and restrict ISIS forces still active in Iraq.

Reports of human rights abuses also include allegations of unlawful killings by some members of the ISF (particularly by some members of the Popular Mobilization forces), torture, harsh and life-threatening conditions in detention and prison facilities, criminalization of libel and other limits on freedom of expression, widespread corruption, greatly reduced penalties for so-called honor killings, coerced or forced abortions imposed by ISIS on its victims, legal restrictions imposed on the freedom of movement of women, and trafficking in persons. See Request for Administrative Notice, Iraq, *supra*; *Iraq 2021 Human Rights Report, supra*, at 3.

### **Current U.S. Relations with Iraq**

The U.S. mission in Iraq remains dedicated to building a strategic partnership with Iraq and the Iraqi people. See *U.S. Relations with Iraq, supra*, at 1-3. In coordination with the Global Coalition to defeat ISIS, the United States assisted Iraq's efforts to achieve the long-sought goal of liberating all of Iraqi territory from ISIS. The Strategic Framework Agreement (SFA) between Iraq and the United States provides the basis of the United States' bilateral relationship with Iraq and covers a wide range of bilateral issues, including political relations and diplomacy, defense and security, trade and finance, energy, judicial and law enforcement issues, services, science, culture, education, and environment. (*id.*, at 2)

U.S. bilateral assistance to Iraq is considerable and stresses economic reform, assistance to vulnerable groups, and democracy and governance. See *U.S. Relations with Iraq, supra*, at 3-4. U.S. security assistance supports the development of modern, accountable, fiscally sustainable, and professional Iraqi military resources capable of defending Iraq and its borders. The United States has designated Iraq as a beneficiary developing country under the Generalized System of Preferences Program and has been proactive in the promotion of two-way trade between the United States and Iraq. (id.) Iraq is recognized for its cooperative efforts with international organizations, including the United Nations, the International Monetary Fund, the World Bank, the International Organization for Migration, the International Labor Organization, and the Arab League. (id.) Iraq is also a candidate for accession to the World Trade Organization.

### **Endorsements and civic interests**

Applicant is highly regarded by U.S. military customers, supervisors, colleagues, and friends who know him and have worked with him in his linguist assignments. U.S. Army officers who worked with Applicant during the Operation Iraqi Freedom campaign lauded his engineering and linguist contributions to Coalition Forces operating in Iraq, sometimes at great personal risk to himself and his family. (AEs A-B) Worthy of special commendation were Applicant's communicated insights into the cultural and political landscape of the Iraqi sectors he was assigned to serve.

Applicant has expressed a strong interest in aiding the U.S. Refugee Admissions Program and has applied for admission. (AE I) He listed himself as a carpenter in his application.

### **Policies**

By virtue of the jurisprudential principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." As Commander in Chief, "the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. Eligibility for access to classified information may only be granted "upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.



The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns, if any. These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following ¶ 2(a) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

### **Foreign Influence**

*The Concern:* 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.

## **Burdens of Proof**

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See *also* Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

Applicant and his wife are naturalized U.S. citizens. Neither Applicant nor his wife have any control (either individually or jointly with his siblings) over any property or financial interests in Iraq. Key to the Government’s foreign influence concerns are Applicant’s two brothers and seven sisters who are citizens and residents of Iraq. Terrorist attacks and human rights abuses have long plagued Iraq. Because Iraq presents some heightened security risks for applicants who have family and property interests in the country, Applicant is exposed to civilian and military authorities in the country who might use improper and/or illegal means to obtain classified information in Applicant’s possession or control through his siblings (especially his older brother).

While Applicant’s contacts with his siblings and daughter are infrequent, they are longstanding. And, there is a rebuttable presumption that a person with immediate family members in a foreign country has ties of affection for, or obligation to, his or her immediate family members, and this presumption covers in-laws (to include Applicant’s

mother-in-law residing in Iraq). ISCR Case No. 07-06030 at 3 (App. Bd. June 19, 2008); ISCR Case No. 05-00939 at 4 (May 15, 2018) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002))

To be sure, the risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government; the government ignores the rule of law (including widely accepted civil liberties); a family member is associated with or dependent upon the government; the government is engaged in a counterinsurgency; terrorists cause a substantial amount of death or property damage; or the country is known to conduct intelligence collection operations against the United States. With respect to Iraq, the country is certainly not free from risks of potential hostage taking. Iraq, though, maintains strong bilateral relations with the United States and recognizes democratic principles of governance.

Taken together, the personal and financial relationships Applicant has with Iraq, and the situations that exist in this country, places a significant burden of persuasion on Applicant to demonstrate that his relationship with any family member living in Iraq and pension interest that Applicant has with the country (through his daughter as his pension assignee) does not pose irreconcilable security risks. Such risks that cannot be reconciled or otherwise mitigated could potentially place him in a position of having to choose between loyalty to the United States and a desire to assist a relative living in or visiting Iraq, or to take actions to protect his property interests (directly or indirectly) in Iraq.

Further, while Applicant's residual interest in his Iraqi pension is small, the potential of a reversionary interest in his pension does present some potential for irreconcilable conflicts of interest. For these reasons, the Government urges security concerns over risks that Applicant and his pension interest in Iraq might be subject to seizure or revision by civilian or military authorities in Iraq. His pension interest, accordingly, poses some risk of revision or confiscation by the government of Iraq. Applicant's family ties and residual pension interests, accordingly, warrant some application of two of the disqualifying conditions of the foreign influence guideline DC ¶¶ 7(a), "contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion" and 7(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."

Potentially applicable, too, to Applicant's situation is ¶ 7(f), "substantial business, financial, or property interests in a foreign country, or in any foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest." Applicant's reported \$900 monthly pension currently assigned to his daughter in Iraq is potentially worth over \$300,000 in discounted future benefits. His interest, though, is limited to a potential reversion, which is quite small.

Neither Applicant nor his daughter have any direct control over any potential reversion or reversion of Applicant's assigned pension fund.

True, none of Applicant's siblings or daughter (save for Applicant's youngest brother who was kidnapped during the Operation Iraqi Freedom campaign) in Iraq have any history to date of being subjected to any coercion or pressure. These historical antecedents limit the risk of any potential conflict situation. And, while the absence of any past coercive measures taken by Iraqi authorities does not completely absolve Applicant from any coercive risks in the future given Iraq's checkered history of terrorism and human rights abuses, the risks of any coercive measures being taken against his siblings and daughter should be considered minimal in making an overall risk assessment.

This is not to discount the significance of the nature of the foreign government (Iraq in this case). Iraq's intelligence-gathering and human rights and the country's government relations with the United States are among the most important considerations to be considered when assessing risks associated with an applicant's family ties and property interests in that country. See ISCR Case No. 16-02435 at 3 (May 15, 2018) (citing ISCR Case No. 15-00528 at 3 (App. Bd. March 13, 2017) Iraq to its credit has maintained good bilateral relations with the United States. While the recent reports of attacks and counterattacks on Iraqi targets raise concerns over the future of the U.S. presence in the country in the wake of Iraq's being drawn into the still unfolding military recriminations from the U.S. drone strikes on Soleimani on Iraqi soil, to date the status of the United States presence and role in Iraq has not been reversed or changed in any manifest way.

Mitigation is available to Applicant under the foreign influence guideline of the Directive. Based on his case-specific circumstances, mitigating conditions (MC) ¶¶ 8(a), "the nature of the relationships with foreign persons, the country in which these persons are located, or the persons or activities of these 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"; and 8(b), "there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest," apply to Applicant's situation.

The citizenship and resident status of Applicant's siblings, mother-in-law, and daughter in Iraq, and the pension benefits assigned to his daughter in Iraq, considered together, create no more than remote risks of a conflict situation that could place Applicant in a position that could force him to choose between his personal interests and the security interests of the United States. Given the substantia family ties that Applicant and his wife enjoy in the United States, any potential conflicts that Applicant could potentially face with his siblings and daughter in Iraq, promise to be minor and reconcilable with Applicant's long demonstrated loyalty to the United States and considerable and longstanding family interests in this country.

Other mitigating conditions available to Applicant are ¶¶ 8(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 8(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.” In Applicant’s case, he has demonstrated infrequent contact with his siblings and daughter in Iraq. And, the residual pension interests he potentially retains in his daughter’s pension assignment in Iraq is relatively small and unlikely to ever materialize in applicant’s lifetime.

In sum, Applicant’s connections to his siblings and daughter living in Iraq are less significant than his connections to his family members in the United States. Applicant’s past support of the U.S. Government as an engineer and linguist for the U.S. State Department assisting the Iraqi government in Operation Iraqi Freedom are important factors in weighing the merits of mitigating foreign influence-based security concerns. Applicant’s substantial connections to the United States when considered together with his foreign connections are sufficient to overcome the foreign influence security concerns under Guideline B.

### **Whole-person assessment**

Whole-person assessment of Applicant’s foreign influence risks to ascertain whether they are fully compatible with eligibility requirements for holding a security clearance takes account of the citizenship status of Applicant, his spouse, his siblings, and his daughter, all of whom are either citizens and residents of Iraq or dual citizens of Iraq and the United States (as with Applicant and his wife). Applicant is a 62-year-old linguist and engineer by training for a defense contractor with seven siblings and a daughter who are citizens and residents of Iraq. While he has a potential residual interest in his Iraq military pension (currently assigned to his daughter), the interest is at most an inchoate interest unlikely to ever materialize. Applicant maintains infrequent contact with his siblings, mother-in-law and daughter in Iraq and provides no financial support to any of his family members living in the country.

Based on the evidence presented, there is no evidence that Applicant’s relatives residing in Iraq have any ties or connections to Iraq (except for Applicant’s older brother and brothers-in-law of several of his sisters with military service in Iraq) Applicant’s honorable service to the United States . as a linguist and engineer during the Operation Iraqi Freedom campaign t is well noted and a good indicator of his loyalties to the United States.

A Guideline B decision concerning Iraq must take into consideration the geopolitical situation and dangers Iraq that still present some heightened risks despite the country’s strong bilateral relationships with the United States. Terrorists continue to threaten the interests of the United States in Iraq and can be expected to do so in the foreseeable future. Through all of this, Iraq still remains a reliable partner in the war on

terror in the Middle East, and can be expected to fully comply with the rule of law as an important ally of the United States.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude foreign influence security concerns are mitigated. Eligibility for access to classified information is granted.

### **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: FOR APPLICANT

Subparagraphs 1.a through 1.d: 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 Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Roger C. Wesley  
Administrative Judge