



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



In the matter of:)	
)	
)	ISCR Case No. 22-02133
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

09/25/2023

Decision

BENSON, Pamela C., Administrative Judge:

Applicant did not successfully mitigate the risks of foreign influence raised by her familial ties with Iraq. Eligibility for access to classified information is denied.

Statement of the Case

On August 31, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence). This action was taken 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 implemented by the DOD on June 8, 2017.

On January 22, 2023, Applicant responded to the SOR and requested a decision based on the administrative (written) record. On February 9, 2023, Department Counsel requested a hearing, pursuant to Paragraph E3.1.7 of the Additional Procedural Guidance at Enclosure 3 of the DOD Directive 5220.6.

On June 12, 2023, a notice of hearing was issued, scheduling the hearing for July 11, 2023. The hearing proceeded as scheduled. Applicant testified, her son testified as a witness, and she did not submit any documentary evidence. Department Counsel submitted three documents, which I admitted as Government Exhibits (GE) 1 through 3, without objection. Department Counsel also submitted materials for administrative notice concerning Iraq, which I admitted as Administrative Notice (AN) I, without objection. The administrative notice materials are included in the record to show the basis for concluding that the noticed facts are well known, generally accepted within the U.S. government, or are not subject to reasonable dispute.

During the hearing, I offered to hold the record open for two weeks in the event either party wanted to supplement the record. Applicant timely submitted a copy of her U.S. passport, which I labeled as Applicant's Exhibit (AE) A and admitted into evidence without objection. The Defense Office of Hearings and Appeals (DOHA) received the transcript on July 18, 2023, and the record closed on July 25, 2023.

Findings of Fact

The SOR alleges foreign influence security concerns based on Applicant's family members and friends in Iraq. In her Answer, Applicant admitted all of the allegations. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 42 years old. She was born in Baghdad, Iraq. In March 2003, U.S. forces invaded Iraq vowing to destroy Iraqi weapons of mass destruction and end the dictatorial rule of Saddam Hussein. Applicant and her husband were Iraqi citizens, and they had a young son and two daughters. In early 2006, Applicant's husband worked for the United States forces in Iraq as a local hire Arabic linguist. After working for a few months, he was killed by an improvised explosive device while he was performing his duties as a translator. At that time, Applicant was 23 years-old and had three young children. In 2008, she applied for refugee status in the United States. In 2010, she received approximately \$442,000 of life insurance money from the U.S. Army following the death of her husband. She placed the insurance proceeds into an Iraqi bank account. She arrived in the U.S. in September 2012 with her children, and she became a naturalized U.S. citizen in December 2017. Her son and two daughters, now ages 22, 18 and 17 respectively, reside with Applicant in her home. They are U.S. citizens. (GE 1-3; Tr. 17-18, 24, 27-30, 41-45, 51)

In 2021, Applicant applied to work for a government contractor as a linguist. She was offered a job, but her employment is contingent on her obtaining a DOD security clearance. She decided to apply for this position because her children are older and can take care of themselves. She does not consider herself to be a dual citizen and claims allegiance to the United States only. She currently works for a company in Iraq that is similar to Amazon. Her friend owns the company, and she is paid \$3,400 per month as an employee. Applicant ships items from the U.S. to the company's customers in Iraq. The owner, originally from Iraq, is a U.S. citizen living in the U.S. (GE 1 and 2; Tr. 59-61)

From September 2012 to September 2020, (actually late 2019), Applicant received approximately \$3,000 to \$4,000 monthly from her father in Baghdad, Iraq. (SOR ¶ 1.g) The money was sent to her via Western Union. The monthly payments were from the life insurance payout of \$442,000 she received in 2010 and deposited into an Iraqi bank account. In 2018 Applicant's sister provided her with \$20,000; and in 2019, Applicant's friend sent her \$23,000, and another friend sent her \$4,000. Applicant had just purchased a home in 2018 and opened a small convenience store in 2019. (SOR ¶¶ 1.h - 1.j) All of the money sent to Applicant was money provided to her as an insurance settlement for her husband's death. Applicant's father was retired and restricted in the amount of money he could send to Applicant without causing problems. Her son testified that others stepped in, like her sister and Applicant's friends, to help with the wire transfers so Applicant could purchase the home and the business, which later failed. The remainder of the insurance proceeds were used up in late 2019. (Tr. 27-33, 44-48, 59)

Applicant's father is a citizen and resident of Iraq. (SOR ¶ 1.a) She communicates with him on a weekly basis. He is a retired supervisor of a chemical plant. She disclosed her father on her August 2021 SCA. During her September 2021 background interview, Applicant was asked by an investigator if other than her father, did she have any other family members or foreign contacts to report. Applicant initially stated she did not, but then she mentioned her sister, who is also a citizen and resident of Iraq. (SOR ¶ 1.c) Applicant has contact with her sister on a weekly basis. Her sister is unemployed, and Applicant was unsure of her sister's spouse's occupation. Applicant reported another sister living in Sweden, but she had not had contact with this sister in the last 15 years. Applicant also has a brother living in Sweden, unemployed, and in the process of obtaining his Swedish citizenship. (SOR ¶ 1.b) She communicates with him about every three months. (GE 1-3; Tr. 23-24, 48)

Applicant also disclosed to the investigator that she has a stepsister who is a citizen and resident of Iraq. The stepsister lives with her father and attends high school. Her stepmother is a citizen and resident of Iraq, also living with her father. (SOR ¶ 1.d) She works in elder care, and Applicant does not have much contact with her unless she is staying at her father's home during her trips to Iraq. Applicant has two brothers who are citizens and residents of Iraq. (SOR ¶ 1.c) She has a brother who is employed by the Iraqi Army, but she does not know if he is an officer or if he works in a civilian position. (SOR ¶ 1.e) She does not communicate often with this brother. Another brother is a police officer in Iraq, and they communicate with each other on a sporadic basis, monthly to quarterly. (SOR ¶ 1.f) Both brothers have served their mandatory conscript military service in Iraq. (GE 1-3; Tr. 24-25, 50-52)

On Applicant's deceased husband's side of the family, his mother, two brothers and two sisters are citizens and residents of Iraq. The two brothers are appliance repair electricians, one sister is a nurse, and the other sister is an accountant. Applicant has approximately 16 nieces and nephews. Applicant has limited contact with her nieces and nephews. (Tr. 19-23, 52)

Applicant traveled to Iraq to visit family in July 2018, December 2018, April 2019, January 2020, November 2020, May 2021, December 2021, June 2022, and August of 2022. She testified that since August 2022, she has travelled to Iraq on approximately four other occasions. Since the insurance money was depleted in about late 2019, Applicant's son and her current employer have paid for her trips to Iraq. Post-hearing submission of her U.S. passport and a review of the travel stamps therein support Applicant's testimony that she has travelled to Iraq on multiple occasions since August 2022. (Tr. 26, 50-52, 59; AE A)

Administrative Notice

I have taken administrative notice of the following facts concerning Iraq:

The Federal Republic of Iraq (Iraq) is a constitutional parliamentary republic. The U.S. Department of State warns U.S. citizens not to travel to Iraq due to terrorism and armed conflict. U.S. citizens in Iraq are at high risk for violence and kidnapping. Numerous terrorist and insurgent groups are active in Iraq and regularly attack both Iraqi security forces and civilians. The Islamic State in Iraq and Syria (ISIS), a designated terrorist organization, remains a threat to public safety in Iraq. Additionally, criminal gangs and local militia pose a potential threat to U.S. citizens. In February 2022, the U.S. Director of National Intelligence (DNI) concluded that, given the ongoing presence of ISIS and Iraqi Shia militias, Iraq will likely face a lengthy period of political turmoil and conflict. (AN I)

Iraq's most significant human rights abuses are largely fueled by the terrorist activities of ISIS; however, some Iraqi security forces were alleged to have engaged in unlawful killings, disappearances and extortion, torture, life-threatening conditions in detention and prison facilities, and arbitrary arrest and detention. (AN I)

The United States' commitment to Iraq is balanced against the inherent dangers of the ongoing conflict in Iraq to its citizens and residents from terrorists and significant human rights issues. (AN 1)

Policies

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

The security concern under this guideline is set out in AG ¶ 6 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.

Two disqualifying conditions under this guideline are relevant to this case:

AG ¶ 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

AG ¶ 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.

"The United States has a compelling interest in protecting and safeguarding [sensitive] 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). To establish AG ¶ 7(a), the Government must demonstrate a "heightened risk" of exploitation due to Applicant's contacts with her family members in Iraq. Given the presence and activities of several terrorist organizations hostile to the interests of the United States in Iraq, the Government has established the requisite "heightened risk" and potential conflict of interest regarding Applicant's contacts with her father, sister, brothers, and extended family members in Iraq. AG ¶¶ 7(a) and 7(b) apply. The Government did not establish a "heightened risk" of exploitation due to Applicant's sporadic contact with her brother and sister in Sweden, her stepmother and stepsister in Iraq, or her friends transferring Applicant's money from Iraq to the U.S. in 2019.

The following mitigating conditions under this guideline are potentially relevant:

AG ¶ 8(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;

AG ¶ 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; and

AG ¶ 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.

Not every foreign contact or tie presents the heightened risk consideration. The “heightened risk” denotes a risk greater than the normal risk inherent in having a family member or a spouse’s family member living under a foreign government. The nature and strength of the family ties or other foreign interests and the country involved (i.e., the nature of its government, its relationship with the United States, and its human rights record) are relevant in assessing whether there is a likelihood of vulnerability to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government; a family member is associated with, or dependent on, the foreign government; or the country is known to conduct intelligence operations against the United States. In considering the nature of the foreign government, the administrative judge must take into account any terrorist activity in the country at issue. See generally ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

Terrorist organizations pose an ongoing and critical threat to U.S. interests in Iraq. Applicant’s brothers are employed by the Iraqi Army and Iraqi Police Force. Her brothers are in positions directly connected to the Iraqi government and likely to cause a conflict of interest. Applicant actively maintains close relationships with her father, sister, brothers, and extended family members in Iraq. She travels to Iraq frequently to visit her family.

I considered the totality of Applicant’s ties to Iraq, the nature of its government, its relationship with the United States, and its human rights record, all of which are relevant in assessing the likelihood that an applicant’s family members are vulnerable to government coercion. Applicant’s extended family members in Iraq “could be a means through which Applicant comes to the attention of those who seek U.S. information or technology and who would attempt to exert coercion upon [her].” ADP Case No. 14-01655 at 3 (App. Bd. Dec. 9, 2015) (citing ISCR Case No. 14-02950 at 3 (App. Bd. May 14, 2015)). Her relationships with relatives who are living in Iraq create a potential conflict of interest because terrorists could place pressure on her family in an effort to cause Applicant to compromise classified information. These relationships create “a heightened risk of foreign inducement, manipulation, pressure, or coercion” under AG ¶ 7. Overall, the facts show there is a possibility that Applicant could be placed in a position of having to choose between the interests of her foreign family members and the interests of the United States. When she travels to Iraq, she is available for coercion by malign persons or entities. Her ties to the United States are not enough to fully mitigate the risk of undue foreign influence. AG ¶¶ 8(a), 8(b), and 8(c) do 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 have incorporated my comments under Guideline B and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant has longstanding personal and family connections to Iraq, which given current geopolitical circumstances and risks from terrorists presents a heightened risk. The evidence supports that Applicant's bonds of affection for her family in Iraq are ongoing, and her brothers are employed in positions that are likely to cause a conflict of interest. Her numerous trips and frequent contacts with family members in Iraq are manifestations of her care and concern for relatives living in that country. Although she has made a new life for herself and her children in the United States, that consideration is not sufficient to fully mitigate the risk of undue foreign influence. It is important to make clear to the Applicant that security clearance decisions must be made in terms of the national interest and shall in no means be a determination of her loyalty to 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. Applicant's connections to Iraq are substantial and ongoing, and they raise significant security matters. After a careful review of the documents and testimony in the record, I conclude foreign influence security concerns are not mitigated. Eligibility for access to classified information is denied.

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.c, 1.e, and 1.f:	Against Applicant
Subparagraphs 1.b, 1.d, 1.g through 1.j:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge