



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



In the matter of:)
)
) ISCR Case No. 22-01542
)
Applicant for Security Clearance)

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel
For Applicant: *Pro se*

11/01/2023

Decision

DORSEY, Benjamin R., Administrative Judge:

Applicant did not mitigate the foreign influence security concerns. The foreign preference security concerns were not established. Eligibility for access to classified information is denied.

Statement of the Case

On December 30, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence, and Guideline C, foreign preference. Applicant responded to the SOR on February 5, 2023 (Answer) and requested a hearing before an administrative judge. The case was assigned to me on July 11, 2023. The hearing was convened as scheduled on October 19, 2023. I received a transcript (Tr.) of the hearing on October 26, 2023.

Evidence

I admitted Government Exhibits (GE) 1 through 3 in evidence without objection. Applicant testified but did not offer any documents in evidence.

On the Government's motion, I took administrative notice of certain facts about The Republic of Iraq as of March 21, 2023, as contained in official U.S. Government documents (Hearing Exhibit I).

Findings of Fact

Applicant is a 40-year-old naturalized U.S. Citizen. He has an employment offer from a U.S. defense contractor that is conditioned upon his being granted security clearance eligibility. He anticipates that if he begins working for this contractor, he will be living and working in Iraq. He was born in Iraq to Iraqi parents. He has a bachelor's degree from an Iraqi university. Applicant first came to the U.S in 2013 as a refugee. He became a naturalized U.S. citizen in November 2018. He holds both U.S. and Iraqi citizenships. He has never married and has no children. (Tr. 24-25, 28-30, 34; GE 1-3)

Applicant's mother (SOR ¶ 1.a), sister (SOR ¶ 1.b), brother (SOR ¶ 1.c), and several friends are citizens and residents of Iraq. His brother and one of these friends (SOR ¶ 1.d) are teachers employed by the Iraqi Ministry of Education. Applicant's father was a lieutenant general in the Iraqi military. He was killed in combat in 1984. Applicant's mother owns real property in Iraq that she uses as rental property. This property is valued at about \$100,000. His mother, brother, and brother's family live in a home on real property in Iraq that is still titled in his father's name. This property is valued at about \$600,000. Applicant shares an inheritance right among his other siblings in the parcel of land valued at \$600,000 (SOR ¶ 1.e). He also holds a similar inheritance right in the parcel of land owned by his mother. In about May 2022, he told an Army investigator that he did not want to renounce his Iraqi citizenship because he wanted to protect his potential ownership rights in the real property in Iraq titled in his father's name (SOR ¶ 2.a). However, he testified at hearing if he was forced to renounce one of his citizenships, he would renounce his Iraqi citizenship. (Tr. 24-25, 38-48, 50-61, 63-71; Answer; GE 1-3)

For years, Applicant's mother received a pension from the Iraqi government on behalf of his father after he passed away. She now receives the equivalent of social security income from the Iraqi government. Applicant provided his mother and sister about \$300 to \$400 in support a few times per year until about 2019. He testified that he no longer sends money to his mother and sister because he cannot afford to do so. He maintains contact with his mother nearly every day via video chat. He last saw her in person in Iraq in February 2022. (Tr. 43-48, 50-52; Answer; GE 1-3)

Applicant has contact with his sister four-to-five times per week via video chat. She is a homemaker and has never worked outside the home. She is married to an Iraqi citizen and has five children who are also citizens of Iraq. He last saw her in person in Iraq in February 2022. (Tr. 52-55; Answer; GE 1-3)

Applicant has contact with his brother two-to-three times per week via e-mail and electronic chat rooms. His brother is a teacher and is married to an Iraqi citizen. He has children who are Iraqi citizens. Applicant last saw his brother in person in Iraq in February 2022. (Tr. 55-58; Answer; GE 1-3)

Applicant has contact with his friend who is a teacher in Iraq a few times per year over electronic social media platforms. Applicant last saw this friend in person in February 2022. (Tr. 58-61; Answer; GE 1-3)

Applicant has never been a member of the Iraqi military or worked for the Iraqi government. Prior to his arrival in the U.S., Applicant worked for a non-governmental organization (NGO) in Iraq. Since arriving in the U.S. in 2013, he has worked in the U.S. as a delivery driver, a driver for a U.S. based corporation providing ride-hailing services, and as a technician for a contractor of an internet company. He currently earns about \$4,000 per month. He has about \$4,000 in a U.S. based bank account and about \$2,000 invested in U.S. based stocks. He owns a car in the U.S. (Tr. 30-38, 47-48, 52-64; GE 1, 3)

Applicant has friends who reside in the U.S., but none of his family members reside here. None of his family members hold U.S. citizenship or U.S. residency rights, and none of them have visited the U.S. Applicant owns no real property in the U.S. He claimed his family does not know that he is trying to obtain security clearance eligibility, or that he may be working in Iraq. He claimed he will not tell them if he does obtain security clearance eligibility. He expressed his loyalty to the United States. He testified that his family in Afghanistan could not be used to coerce or intimidate him into revealing classified information, and that he would report any attempt to do so. (Tr. 30-38, 47-48, 52-64; GE 1-3)

Since he arrived in the U.S. in 2013, Applicant visited Iraq in 2017 and 2021 to 2022. He stayed in Iraq for about three months in 2017 and for about 14 months in 2021. He stayed in the house titled in his father's name with his mother and brother when he visited. He had in-person contact with his family members and friends during these visits. (Tr. 50-61; GE 1-3)

In HE 1, the Government included information from the U.S. Department of State as of March 2023, about the United States' relations with Iraq and the current conditions in that country. I take administrative notice of the information included in those documents including, but not limited to:

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 country experienced large-scale protests in Baghdad and several Shia-majority provinces beginning in 2019 and lasting through 2022, with reports of more

than 500 civilians killed and 20,000 or more injured. Another, similar incident in August 2022 resulted in more than 20 deaths. 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

The security concern for foreign influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable 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, including its level of control, 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 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). The administratively noticed country conditions in Iraq, such as terrorism, civil unrest, and its human-rights record, raise the security concerns to the level of a heightened risk.

Applicant's mother, two siblings, and a friend with whom he maintains close and continuing contact, are citizens and residents of Iraq. One of his siblings and the friend have a job that is connected to the Iraqi government. Applicant's connection to his Iraqi family members and friend presents a potential conflict of interest. As a matter of common sense and human experience there is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members and longstanding friends. Application of the AG is not a comment on an applicant's patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved one, such as a family member. (ISCR Case No. 08-10025 at 4 (App. Bd. Nov. 3, 2009). AG ¶¶ 7(a) and 7(b) apply to SOR ¶¶ 1.a-1.d.

SOR ¶ 1.e alleges that Applicant co-owns a piece of real property in Iraq that has a value of about a \$600,000. While he may have inheritance rights in this property that are relevant to mitigation, the record evidence demonstrates that he does not own the real property. I therefore find SOR ¶ 1.e for Applicant.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

At the outset, I find that Applicant's contact with his friend who is a teacher in Iraq is so casual that there is little likelihood that it could create a risk for foreign influence or exploitation. I find he has mitigated the security concerns with respect to the allegations in **SOR ¶ 1.d.**

Country conditions in Iraq raise security concerns to the level of a heightened risk. Applicant has several immediate family members in Iraq with whom he maintains close and frequent contact. He also has a significant number of extended family in Iraq. Two of his family members are reliant on the Iraqi Government for income. While he does not currently own any property in Iraq, his potential future inheritance rights involve substantial property interests there. He has shown an interest in protecting his potential future ownership rights in these properties. He has lived about 75 percent of his life in Iraq. He has no family who are citizens of the United States and no family who reside here. While he owns a car, has small investments, and a job in the U.S., he owns no real property here. The value of his U.S. based property is not significant when compared to his potential property rights in Iraq. I find that he has failed to provide sufficient evidence that any of the Guideline B mitigating conditions apply.

Guideline C, Foreign Preference

AG ¶ 9 explains the concerns about foreign preference stating:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may provide information or make decisions that are harmful to the interests of the

United States. Foreign involvement raises concerns about an individual's judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. *By itself*, the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

The guideline notes several conditions that could raise security concerns under AG ¶ 10. The following is potentially applicable in this case:

(e) using foreign citizenship to protect financial or business interests in another country in violation of U.S. law.

The Government alleges that Applicant used his Iraqi citizenship to protect his financial interests in Iraq. He may be using his Iraqi citizenship to protect his inheritance interest in Iraqi real property because at one time, he did not want to renounce his Iraqi citizenship to keep that potential interest. However, there is no evidence in the record that this action violates U.S. law. I find the disqualifying condition in AG ¶ 10(e) is not established.

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 have incorporated my comments under Guideline B and Guideline C in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the foreign influence security concerns. The foreign preference security concerns were not established.

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:	Against Applicant
Subparagraph 1.d-1.e:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

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

Benjamin R. Dorsey
Administrative Judge