



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



In the matter of:)	
)	
)	ISCR Case No. 23-00507
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: Alan Edmunds, Esq., Applicant’s Counsel

12/06/2023

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On April 12, 2023, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines B and F. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

Applicant answered the SOR on June 16, 2023, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on September 27, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 12, 2023, scheduling the hearing for November 1, 2023. The hearing was convened as scheduled. The Government offered Exhibits (GX) 1 through 5, which were admitted without objection, and Hearing Exhibit (HX) I for Administrative Notice. Applicant testified on her own behalf and called one witness. Applicant offered 20 documents, which I marked Applicant’s Exhibits (AppXs) A through T, and were

admitted without objection. The record was left open until November 6, 2023, for receipt of additional documentation. On November 6, 2023, AppXs U and V were admitted without objection. DOHA received the transcript of the hearing (TR) on November 13, 2023.

Procedural Rulings

At the hearing, the Government requested I take administrative notice of certain facts relating to Republic of Iraq. Department Counsel provided a seven-page summary of the facts, supported by five Government documents pertaining to Iraq, identified as HE I. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, and not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

Applicant admitted to the allegations in SOR ¶¶ 1.a, 1.b. and 2.c. She denied SOR allegations ¶¶ 2.a, and 2.b. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 29-year-old employee of the United Nations (UN). She has been employed with the UN since March of 2020. Applicant is not married, and has no children. (TR at page 23 line 22 to page 25 line 17, and GX 1 at pages 13 and 21.)

Guideline B - Foreign Influence

1.a. Applicant admits that, in the past, she had close and continuing contact with relatives who are citizens and residents of Iraq. She has ceased her contact with these Iraqi relatives since receipt of the SOR in June 2023. These relatives are: her 70-year-old grandmother, who never worked outside of her home; her 85-year-old grandfather who is long retired but never worked for the Iraqi government; her 45-year-old uncle who is a pharmacist; her 56-year-old uncle who is a security guard; her 40-year-old aunt who is a homemaker; her 28-year-old cousin who works for the UN in Switzerland; her 55-year-old uncle who is a driver for the UN in Iraq; and finally, her 47-year-old aunt who works for the Red Cross. (TR at page 40 line 7 to page 52 line 23.) All of her immediate family, comprising her parents and siblings, are citizens and residents of the United States. (TR at page 31 lines 7~10, and GX 1 at pages 22~28.)

1.b. Applicant maintains a bank account in Iraq, with an approximate value of \$2,000. This bank account is a matter of necessity, as there is a 10% surcharge to withdraw funds from a U.S. bank account in Iraq. (TR at page 25 line 18 to page 28 line 2, at page 34 lines 21~25, at page 53 line 4 to page 54 line 3.) The Applicant's witness, a former FBI Agent and her UN supervisor, further explained the necessity to maintain an Iraqi bank account for those unable to leave Iraq on occasion and bank outside the country. (TR at page 20 line 13 to page 22 line 18.)

Guideline F - Financial Considerations

2.a. Applicant denies that she is indebted to Creditor A in the amount of about \$1,344. This debt has been settled and paid as evidenced by Applicant's documentation. (TR at page 32 lines 11~17, at page 32 line 25 to page 33 line 11, and AppX E.)

2.b. Applicant denies that she is indebted to Creditor B in the amount of about \$56. This debt has been paid in full as evidenced by Applicant's documentation. (TR at page 32 lines 18~24, at page 33 lines 12~18, and AppX F.)

2.c. Applicant is making the monthly payments of \$150 towards her charged-off car loan, which were agreed to by the creditor, as evidenced by documentation. (TR at page 33 line 19 to page 34 line 5, and AppXs G and U.)

Notice

I take administrative notice of the following facts regarding the Republic of Iraq: Iraq is a constitutional parliamentary republic. The U.S. Department of State travel advisory for Iraq is Level 4: Do not travel. During 2021, the primary terrorist threats within Iraq included ISIS remnants and various Iran-aligned militia groups. Significant human rights issues remain present in Iraq.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who applies for access to classified information seeks to enter 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (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 relating to the guideline 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. Three 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;

(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; and

(i) conduct, especially while traveling or residing outside the U.S., that may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

Applicant works for the UN in Iraq, has a bank account in Iraq, and has many Iraqi relatives. The evidence is sufficient to raise these potentially disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 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 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.

Applicant works for the UN and has no connection with the Iraqi government. She has ceased contact with her Iraqi relatives, none of whom have any connection with the Iraqi government. Applicant's \$2,000 Iraqi bank account is used only as a matter of convenience to cover her monthly expenses. Foreign Influence is found for Applicant.

Guideline F - Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had about \$9,000 of past-due indebtedness. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial problems have been addressed. The only debt she has remaining is a car loan, towards which she is making monthly payments as agreed to by the creditor. Applicant has demonstrated that future financial problems are unlikely. She lives within her monthly budget. (AppX H.) Mitigation under AG ¶ 20 has been established. Financial Considerations is found for Applicant.

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 facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant has a distinguished history of working in the UN and is respected by her supervisor who testified in her behalf. She performs well at her job. (AppXs I-L, R and T.) Her closest familial ties are with her parents and siblings, all of whom are resident American citizens. She has ceased contacts with her relatives in Iraq in order to further minimize any potential coercion or duress.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the Foreign Influence and Financial Considerations security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	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 national security eligibility and a security clearance. Eligibility for access to classified information is granted.

Richard A. Cefola
Administrative Judge