



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



In the matter of:)
)
-----) ISCR Case No. 23-00842
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

02/14/2024

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 and Jordan. Eligibility for access to classified information or to hold a sensitive position is granted.

Statement of the Case

On June 8, 2023, the Department of Defense (DoD) Consolidated Central Adjudication Services (CAS) 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 July 12, 2023, and requested a hearing. The case was assigned to me on October 23, 2023. A hearing was scheduled for November 29, 2023, and heard on the scheduled date. At the hearing, the Government's case consisted of four exhibits (GEs 1-4). Applicant relied on one exhibit and one witness (himself). The transcript (Tr.) was received on December 8, 2023.

Besides its two exhibits, the Government requested administrative notice of facts contained in five attachments related to the country of Iraq and five attachments related to the country of Jordan. 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 situations in Iraq and Jordan.

Administrative notice was extended, without objection, 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 and Jordan. Additional administrative notice was taken (without objections) of *Background Note, Iraq*, U.S. Dept. of State (Feb. 2008); *the World Factbook: Iraq*, U.S. Central Intelligence Agency (Feb. 2018), *Iraq and U.S. Policy*, Congressional Research Service (May 2022) and *U.S. Relations with Iraq*, U.S. Dept. of State (June 2022). Administrative notice was also taken of *Jordan Background and U.S. Relations*, U.S. Dept. of State (June 2023) and *U.S. Relations with Jordan*, U.S. Dept. of State (April 2022)

Procedural issues

Before the close of the hearing, applicant requested the record be kept open to permit him the opportunity to supplement the record with professional licenses, performance evaluations, and credit health information. For good cause shown, Applicant was granted seven days to supplement the record. Department Counsel was afforded two days to respond. Within the time permitted, Applicant documented his professional engineering licenses, performance evaluations, and credit health information. Applicant's submissions were admitted as AEs B-D.

Summary of Pleadings

Under Guideline B, Applicant allegedly has (a) a spouse who is a citizen of Iraq and (b) parents and siblings who are citizens of Iraq and residents of Jordan. Allegedly, the status of Applicant's spouse and family members is unchanged.

In his response to the SOR, Applicant admitted each of the allegations with explanations. He claimed his wife is in the process of becoming a naturalized U.S. citizen. He further claimed that his parents and siblings have no control or influence over his occupation and work-related decisions.

Findings of Fact

Applicant is a 36-year-old employee of a defense contractor who seeks a security clearance. The admitted allegations are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in February 2016 and has one child from his marriage who is a U.S. citizen by birth. (GE 1; Tr. 24, 26-27) He earned a bachelor's degree from a university in Jordan in September 2010. (GE 1)

Applicant emigrated from Iraq in 2007 to be close to his parents in Jordan and never returned to Iraq. (Tr. 29-30) He immigrated to the United States in 2011 and became a naturalized U.S. citizen in September 2019. (GE 1; Tr. 20) He received a U.S. passport in the same month and year. (GEs 1-2) Although his Iraqi passport expired in April 2023 without renewal, he has retained his Iraqi citizenship. (GE 1; Tr. 39)

Following his relocation to the United States, he earned a master's degree from a respected U.S. university in December 2014. (GE 1; Tr. 20) He maintains an active I license as a professional engineer. (AE B) Applicant reported no U.S. or foreign military service. Nor did he report any formal or informal ties or connections to the Iraqi and Jordanian governments.

Applicant's wife was born in Iraq, immigrated to the United States in 2018, and became a permanent resident the same year. (GE 1; Tr 25) She earned a bachelor's degree in architectural engineering from a Jordanian university and became a naturalized U.S. citizen in 2023. (AE A; Tr. 26-28) Like Applicant, she still holds dual Iraqi citizenship. (AE A) Both of her parents are naturalized U.S. citizens and residents. (Tr. 29) Although Applicant and his wife currently rent their home in the United States, they previously owned a U.S. residence. (Tr. 23) Neither Applicant nor his wife own any property in Iraq. (Tr. 28) Together, they retain an approximate U.S.-based net worth of between \$600,000 and \$700,000. (Tr. 24)

Since April 2018, Applicant has been employed as an engineer for his current employer. (GEs 1-2) Between October 2012 and April 2018, he worked for other employers in various positions. (GEs 1-2) He reported brief periods of unemployment between August 2015 and July 2016. (GE 10) His most recent credit report reflects excellent credit and payment status with his creditors. (AE D) While Applicant has never held a security clearance with the DoD, he has held security clearances with other U.S. agencies. (Tr. 22)

Family connections with Iraq

Both of Applicant's parents are citizens of Iraq and residents of Jordan. (GEs 1-2; Tr. 27, 33, 35) Concerned about the security situation in Iraq, they made the decision to immigrate to Jordan in 2006 or 2007. (Tr. 30-31) He maintains weekly telephone contact with his parents. (GEs 1-2; Tr. 30-34)

While residents of Iraq, Applicant's parents owned an oil equipment supply company and still retain property interests in Iraq valued in excess of \$800,000. (Tr. 31-32) Since retired and residents of Jordan, his parents own property in Jordan valued at \$150,000. (Tr. 32-33) While his parents frequently visit Iraq, their intentions are to remain in Jordan. (Tr. 36-37) They have no plans to move to the United States. (Tr. 35-36)

Applicant travels to Jordan annually to see his parents and siblings. He last traveled to Jordan in 2022. (Tr. 38, 40-41) Applicant has provided financial support to his mother when asked. Tr. 35) Honoring her last request for assistance in 2023, he provided \$46,000 to help her with her household expenses. He has no plans at this time, however, to provide any additional funds to his parents in the future. (Tr. 35) Neither of Applicant's parents have any affiliations, ties, or connections with either the Iraqi or Jordanian governments. (Tr. 33)

Applicant has two siblings (an older brother and younger sister) who are citizens of Iraq and residents of Jordan. (GEs 1-2) He maintains weekly telephone contact with both of his siblings. (GEs 1-2; Tr. 38, 40) His brother is unmarried and owns an oil equipment supply firm. (Tr. 37) He has no affiliations, ties, or connections with either the Iraqi or Jordanian governments. (Tr. 40-41)

Applicant's younger sister resides with her parents and is a recent Jordanian university graduate with a degree in architectural engineering. (Tr. 39) Like her brother, she has no affiliations, ties, or connections to either the Iraqi or Jordanian governments. (Tr. 39) Neither of his siblings have any known property in Iraq or Jordan. (Tr. 39)

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. 38, 40) Neither of his siblings have any business or property interests in Iraq. Both Applicant and his siblings have inheritance rights to their parents' property in Iraq. (Tr. 41) By law, their parents' property will be split between Applicant and his siblings after their parents pass. (Tr. 41)

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 *2022 Iraq Human rights Report* at 1; U.S. Department of State (April 2023). The elections were observed by the European Union and domestic civil society organizations and monitored by the United Nations Assistance Mission or

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 parliamentary elections, Iraq adopted a new electoral law based on individual candidacy and local districts. See Request for Administrative Notice, *Iraq; supra; 2022 Human Rights Report, supra*. 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). Following the adoption of the election law, the council of Representatives members nominated and confirmed Mohammed Shiaa al-Sudani as the prime minister, along with 21 of 23 of his cabinet members. See *Iraq 2022 Human Rights Report, supra*. 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 2022 Human Rights Report, supra*, at 2-3.

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. See *Iraq and U.S. Policy, supra*. Whatever government is able to survive the competing Iraqi political blocks will continue to test the will of .continued U.S. 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, supra*, at 1-2,

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 into Lebanon in 1949, and into 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 *Annual Threat Assessment of the U.S. Intelligence Community*, Office of the Director of National Intelligence (February 2023). 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, *supra*, at 2-5; *Iraq Travel Advisory*, U.S. Department of State (January 2023) The State Department assessed Iraq as being a critical-threat location for crime directed at or affecting official U.S. interests. See *Country Reports on Terrorism 2021*, U.S. Dept. of State of State (Feb. 2023). After a year of stalemate and heightened intra-Shia violence following the elections of October 2021, Shia militias can be expected to continue to pose a credible threat to U.S. forces in Iraq and the region. See *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*. 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.

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 5-6. 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 *id.*

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 5-6 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 2022 Human Rights Report*, *supra*, at 2-3.

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.

Of special importance, 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. See *U.S. Relations with Iraq*, *supra*. 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. See *id* and *Country Reports on Terrorism 2021*, *supra*, at 4.

Country Status of Jordan

The Hashemite Kingdom of Jordan (Jordan) is a constitutional monarchy ruled by King Abdullah II bin Hussein. See Request for Administrative Notice, Hashemite Kingdom of Jordan; *Country Reports on Human Rights Practices for 2021: Jordan*, U.S. Department of State (April 2022). Ever since it established diplomatic relations with Jordan in 1949, the United States and Jordan have enjoyed a long history of cooperation and friendship. See *U.S. Relations with Jordan: Bilateral Relations Fact Sheet*, U.S. Dept. of State (April 2022) The United States and Jordan share the mutual goals of comprehensive, just, and lasting peace in the Middle East and an end to violent extremism that threatens the security of Jordan, the region, and the entire globe. See *Jordan: Background and U.S. Relations*, at 12, Congressional Research Service (Dec. 2019) (id.)

From 1949 to 1967, Jordan administered the West Bank. Since the 1967 war between Israel and several Arab states, Israel has maintained control of this territory. The United States continues to believe that the final status of the West Bank can be determined only through negotiations among the concerned parties based on UN Security Council Resolutions 242 and 338. See CIA World Fact Book, Jordan at 1 (Nov. 2022) and *U.S. Relations with Jordan: Bilateral Relations Fact Sheet*, *supra*.

In 2017, the United States provided Jordan \$1.7 billion in bilateral foreign assistance and over \$200 million in DoD support. In addition to bilateral assistance, the United States has provided nearly \$1.1 billion in humanitarian assistance to support Syrian refugees in Jordan. See *U.S. Relations with Jordan, Bilateral Relations Fact Sheet*, *supra*.

In 2018, the United States and Jordan signed a non-binding Memorandum of Understanding (MOU) to provide \$6.375 billion in bilateral foreign assistance to Jordan over a five-year period, pending the availability of funds. The MOU serves to reinforce the U.S. commitment to broaden cooperation and dialogue between the two countries in various areas. Examples include improving health indicators, road and water networks, building of schools, educating Jordanians, providing improved access to water, resource management and conservation, providing energy loan guarantees, and allowing Jordan access to affordable financing from international capital markets. See *U.S. Relations with Jordan, Bilateral Relations Fact Sheet*, *supra*.

The U.S.-Jordan free trade agreement (FTA), the United State's first FTA with an Arab country, has expanded the trade relationship by reducing barriers for services, providing cutting-edge protection for intellectual property, ensuring regulatory transparency, and requiring effective labor and environmental enforcement. See *U.S. Relations with Jordan: Bilateral Relations Fact Sheet*, *supra*.

The United States and Jordan have an "open skies" civil aviation agreement; a bilateral investment treaty; a science and technology cooperation agreement; and a memorandum of understanding on nuclear energy cooperation. Such agreements

bolster efforts to help diversify Jordan's economy and promote growth. Jordan and the United States belong to a number of the same international organizations, including the United Nations, International Monetary Fund, World Bank, and the World Trade Organization. See *U.S. Relations with Jordan: Bilateral Relations Fact Sheet, supra*.

The U.S. Department of State assesses the threat of terrorism in Jordan as high; with the capital of Amman currently assessed as a high-threat location for terrorist activity directed at or affecting official U.S. Government interests. See Request for Administrative Notice, Hashemite Kingdom of Jordan, *supra*, at 3-4; *Jordan Travel Advisory*, U.S. Department of State (Oct. 2022). Recent surveys cite U.S. involvement in Iraq and Syria, and the U.S. Government's policies on Israel as key factors that have fueled anti-American feelings in Jordan. See *id.*

Transnational and indigenous terrorist groups in Jordan have demonstrated the capability to plan and implement attacks. See Request for Administrative Notice, Hashemite Kingdom of Jordan, *supra*, at 3-4. Violent extremist groups in Syria and Iran including the Islamic State of Iraq and the Levant (ISIL (also known as the Islamic State of Iraq and Syria, or ISIS and Jabhat al-Nusra, have conducted attacks in Jordan and continue to plot against local security forces, U.S. and Western interests, and soft targets, such as high-profile public events, hotels, places of worship, restaurants, schools, and malls. Jordan's prominent role in the effort to defeat ISIS, and its shared borders with Iraq and Syria, increase the potential for future terrorist incidents. See *Jordan Country Security Report*, at 4-8, (U.S. Dept. of State (Aug. 2022).

According to the Department of State's 2021 Human Rights Report, Jordan's most significant continuing human rights problems include allegations of torture by security and government officials; arbitrary arrest and detention, including of activists and journalists; infringements on privacy rights; restrictions on freedom of expression; and restrictions on freedom of association and assembly. Impunity remained widespread, and the government did not take sufficiently strong steps to investigate, prosecute, or punish officials who committed abuses. See *Country Reports on Human Rights Practices for 2021: Jordan*, at 1-3 (U.S. Dept. of State (April 2022).

Performance evaluations

Applicant's performance evaluations for calendar year report outstanding results and contributions to his employer in multiple categories. (AE C) Categories assessed include investing in people, fulfilling promises, building sustainable returns for the company, stakeholders, and customers, and exercising key behaviors in the workplace that reflect positively on his vision, values, and covenants. Applicant received outstanding performance ratings in all of these scored categories. (AE C)

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 (4th 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 or Jordan. Key to the Government's foreign influence concerns are Applicant's parents and siblings (an older brother and younger sister) who are citizens of Iraq and residents of Jordan. Terrorist attacks and human rights abuses have long plagued Iraq and to a lesser extent, Jordan. Because both Iraq and Jordan present some heightened security risks for applicants who have family with property interests in the country (Iraq and Jordan in Applicant's case), 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 parents and siblings.

To be sure, Applicant's contacts with his parents and siblings are relatively frequent (weekly with his parents and monthly with his siblings), and reflect close familial ties of 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 even in-laws. 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))

Heightened risk assessments require consideration of an applicant's interests and family ties in the country or countries of interest. 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, and Jordan to a lesser extent, the countries are certainly not free from risks of potential hostage taking. Iraq and Jordan, though, do maintain strong bilateral relations with the United States and recognize democratic principles of governance.

Taken together, the personal and financial relationships Applicant has with Iraq and Jordan, and the situations that exist in these countries, place a significant burden of persuasion on Applicant to demonstrate that his relationships with any family members with Iraqi citizenship and residences in Jordan who hold property subject to inheritance rights favorable to Applicant and his siblings do 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 Jordan, or to take actions to protect his property interests (directly or indirectly) in Iraq and Jordan.

Further, while Applicant's residual inheritance interest in his parents' Iraqi and Jordanian property interests are inchoate ones with the potential for change, his

inheritance potential alone is enough to present some risks of irreconcilable conflicts of interest. See ISCR Case No. 02-28436 at 10-12 (Feb. 2005, aff'd ISCR Case No. 02-28436 (App. Bd. June 2005) While not dispositive, inheritance rights in the property of family members in foreign countries of security interest do present factors to be considered along with other factors when assessing an applicant's comparative wealth in the United States and other countries of interest.

Because of Applicant's inheritance rights in Iraq and Jordan, the Government, in part, urges security concerns over risks that Applicant and his family interests in Iraq and Jordan might be subject to seizure or revision by civilian or military authorities in Iraq, or even Jordan. His inheritance interest, accordingly, poses some risk of revision or confiscation by the government of Iraq, enough to 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 inheritance rights in his parents' Iraqi property interests has potential value to him. His interest, though, is inchoate and unlikely to pass to him in the near future. Neither Applicant nor his parents or siblings have any direct or indirect control over any potential reversion exercise by the Iraqi government.

True, none of Applicant's parents or siblings come with any history 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 or Jordanian 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 parents and siblings 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 and Jordan in this case), Iraq's intelligence-gathering capabilities and human rights abuses, Jordan's human rights violations, and the favorable government relations that exist between both countries and the United States. These 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 and Jordan to their credit have maintained good bilateral relations with the United States. While the recent reports of attacks and counterattacks on Iraqi and

Jordan targets raise concerns over the future of the U.S. presence in the countries, to date the status of the United States presence and role in Iraq and Jordan have not been reversed or changed in any material 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.

However, even with the citizenship and resident status of Applicant’s parents and siblings in Iraq, and Jordan, respectively, Applicant’s inchoate inheritance rights pertaining to his parents’ Iraqi property and Jordanian interests, 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 substantial family ties and financial interests that Applicant and his wife enjoy in the United States, any potential conflicts that Applicant could potentially face with his parents and siblings in Iraq and Jordan, respectively, 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.

Based on Applicant’s relatively modest values placed on his inchoate Iraqi and Jordanian inheritance rights when placed in juxtaposition with his U.S. financial interests, MC ¶ 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,” is also available to Applicant. Nothing developed in the administrative record is indicative of any realistic conflict of interest arising as the result of Applicant’s inheritance rights in Iraq and Jordan that could place him in a position of having to choose between the prioritizing of his own financial interests over the security interests of the United States.

In sum, Applicant’s connections to his parents and siblings holding Iraqi citizenship with Jordanian residence status and their financial interests in these countries (thoroughly covered in the testimony and closings, although not specifically alleged in the SOR) are less significant than his family connections and financial interests in the United States. Applicant’s substantial connections financial interests in the United States when considered together with his foreign connections and inheritance rights are sufficient to overcome the Government’s 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 and residence status of Applicant's parents and siblings who are citizens of Iraq and residents of Jordan. Applicant is a professionally licensed 36-year-old engineer employed by a U.S. defense contractor with outstanding performance ratings. Of presented security concern are his parents and two siblings who are citizens of Iraq and residents of Jordan. While he has an inheritance interest in his parents' Iraqi and Jordanian property interests, the reported interests are inchoate ones with uncertain vesting prospects and substantial U.S. property interests to counter his Iraqi and Jordanian inheritance interests.

Based on the evidence presented, there is no evidence that Applicant's relatives residing in Jordan have any affiliations, ties, or connections to Iraq or Jordan, and Applicant's well-demonstrated loyalties to the United States (having held previous security clearances with other U.S. agencies) and substantial family and financial interests in this country are more than enough to counterbalance any risks of pressure, compromise, or influence from government or military authorities operating in Iraq and Jordan.

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:

Guideline B (FOREIGN INFLUENCE): FOR APPLICANT

Subparagraphs 1.a-1.b: 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.

Roger C. Wesley
Administrative Judge