



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



In the matter of:)	
)	
)	ISCR Case No. 23-01225
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

05/07/2024

Decision

OLMOS, Bryan J., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline B, Foreign Influence. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 27, 2023. On August 8, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B. The DOD issued the SOR under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4 (SEAD 4), *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on September 1, 2023, provided documentation and requested a decision based on the written record by an administrative judge from the Defense Office of Hearings and Appeals (DOHA), in lieu of a hearing. On

September 25, 2023, Department Counsel submitted the Government's File of Relevant Material (FORM), including Government's Exhibits (GXs) 1 through 7. Applicant received the FORM on November 6, 2023 and was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He timely submitted a response and included Applicant's Exhibits (AXs) A through F.

The case was assigned to me on February 2, 2024. The SOR (GX 1) and Answer (GX 4) are the pleadings in this case. Supporting administrative documents were submitted as (GX 2-3). GX 5-6 and AX A-F are admitted without objection.

Request for Administrative Notice

As part of the FORM, Department Counsel submitted (GX 7), a written request that I take administrative notice of certain facts about Iraq, and about the United States' relations with that country. Department Counsel provided supporting documents that verify and provide context for those facts. They are detailed in the Government's administrative notice filing and addressed in the Findings of Fact. Official pronouncements by the President, the State Department, the Defense Department, or other appropriate federal agencies on matters of national security are legislative facts for purposes of DOHA adjudications and must govern the judge's analysis. See ISCR Case No. 17-04208 at 3 (App. Bd. Aug. 7, 2019).

Findings of Fact

In his Answer to the SOR, Applicant admitted all of the SOR allegations with explanations. His admissions are incorporated into my findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 49 years old and was born in Iraq. From 1994 to 1999, he attended college in Iraq and earned his bachelor's degree. From about December 1999 through April 2001, he completed mandatory military service in Iraq where, after three months of basic training, he served as a civil engineer for a municipality in roadworks. (Answer; FORM Response; GX 5-6)

Applicant's employment history from 2001 through mid-2003 is not detailed in the record. However, from about October 2003 through February 2006, he was employed as an engineer with construction companies working on infrastructure projects in Iraq for U.S. Government agencies. He received high praise from his superiors for the work he completed. (FORM Response; GX 6; AX C, AX E)

This work was inherently dangerous. One of Applicant's supervisors stated that two security guards were shot during a project. Applicant also received at least two credible threats. On one occasion, he was threatened by a local citizen while on a project site. On the second occasion, after a fellow employee was attacked and

kidnapped, Applicant was informed that insurgents had learned the names of everyone on his team. This prompted him to leave the job. (FORM Response; AX E)

In 2007, Applicant moved to the United Arab Emirates (UAE). From about April 2007 through December 2012, he worked as a civil engineer for an international construction company. From November 2011 through September 2012, he participated in a distance learning program where he earned a master's degree. (FORM Response; GX 5-6)

In 2010, Applicant submitted a Special Immigrant Visa (SIV) application to the United States where he documented the threats he had received while in Iraq and included a letter of recommendation from one of his previous supervisors. Applicant's SIV was approved and he entered the United States in June 2012. However, after establishing his U.S. immigration status, he returned overseas. (FORM Response; GX 5-6; AX D-E)

The record contains inconsistent statements from Applicant in relation to where he resided after 2012. In his SCA, Applicant listed that, in January 2013 he moved back to Iraq where he lived through January 2014. He confirmed this residency during his interviews with background investigators. However, in his Answer, he described living in the UAE during this time and only visiting Iraq in 2013. In his Response to the FORM, he detailed that he traveled back and forth to the UAE in 2012 and 2013 "until I completed my contract there." He did not provide details of the referenced contract. However, in his SCA, he listed that he was unemployed from January 2013 through February 2015. He claimed to have "permanently" moved to the United States in October 2013. (Answer; FORM Response; GX 5-6)

Applicant also stated that he met his eventual wife in 2013, but he did not specify whether they met in Iraq or the United States. In 2014, following his return to the United States, they married. She is now a dual citizen of Iraq and the United States. They have two children, ages six and nine, who are U.S. citizens. (Answer; FORM Response; GX 5-6)

Applicant began working again, part-time, as a driver from February 2015 through December 2016. From August 2016 through August 2019, he attended advanced studies part-time at an American university and earned a second master's degree. From about December 2016 through early 2023, he maintained full-time employment with a commercial contractor. He has been with his current employer, a DOD contractor, since about March 2023. (Answer; FORM Response; GX 5-6; AX A)

In January 2020, Applicant naturalized as a U.S. citizen. However, he claimed he lost his original certificate and a new certificate was issued showing that he naturalized in October 2022. He has not renounced his Iraqi citizenship. (FORM Response; GX 5-6)

Applicant's mother and father are deceased. He has five brothers that all live outside of the United States. Two of his brothers (B1 and B2) are citizens and residents

of Iraq. (SOR ¶ 1.a) B1 is a lawyer and B2 runs a small retail business. Applicant communicates with B1 weekly and B2 monthly. He described that both brothers are “looking for the same goals for better life opportunities and to feel safe away from the difficult situation in Iraq.” (Answer; FORM Response; GX 5-6)

In about September 2006, Applicant’s third brother (B3) left Iraq and started working for an international construction company in London, where he eventually gained United Kingdom citizenship. In about January 2015, B3 transferred within the same company and now works in Saudi Arabia. B3 remains a dual citizen of Iraq and the United Kingdom. Applicant maintains monthly contact with B3. (SOR ¶ 1.d) (Answer; FORM Response; GX 5-6; AX B)

Applicant’s fourth brother (B4) is a dual citizen of Iraq and Austria. He lives in Austria and is a mechanical technician. Applicant’s fifth brother (B5) is a citizen of Iraq and lives in the UAE, where he works for a local municipality. Applicant stated he also maintains monthly contact with these two brothers. Neither of these brothers is alleged in the SOR. (GX 5-6)

Following the passing of his mother and father “years ago,” Applicant and his brothers inherited their family home in Iraq. (SOR ¶ 1.b) Although he did not specify the value of the property, Applicant stated that he maintains his Iraqi citizenship in order to protect his financial interest in this property. He claimed that “an inside settlement will be done soon,” in which his brothers will acquire his share. He did not specify the timing or details of the settlement. (Answer; FORM Response; GX 5-6)

Applicant’s father-in-law is 78 years old. He served as an Iraqi police officer until he retired in 1993. (SOR ¶ 1.c) He immigrated to the United States in 2009 and naturalized as a United States citizen in 2015. He remains a dual citizen of the United States and Iraq but has not returned to Iraq since he entered the United States. Applicant also disclosed that his mother-in-law, 73 years old, is a dual citizen of the United States and Iraq and is living in the United States. She previously worked as an Arabic instructor in the United States but is now retired. (Answer; FORM Response; GX 5-6; AX F)

Applicant stated that he pays his taxes, votes and maintains a “clean record” in the United States. He highlighted that his children attend school in the United States and that he and his family intend to remain in the United States. He further stated that he was willing to renounce his Iraqi citizenship and claimed that neither his relationships with his brothers and father-in-law or his partial ownership of property in Iraq, could possibly “divide” his allegiance with the United States or allow him to be “manipulated by a foreign person or organization.” (Answer; FORM Response)

The Republic of Iraq

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. militias threaten U.S. citizens and international companies throughout Iraq. Attacks using improvised explosive devices (IEDs) occur in many areas of the country, including Baghdad.

Terrorist groups and those inspired by such organizations are intent on attacking U.S. citizens in Iraq. Islamic State in Iraq and Syria, also known as ISIS, ISIL, or Da'esh is a designated terrorist organization. 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

It is well established that no one has a right to a security clearance. As the Supreme Court held in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” 484 U.S. 518, 531 (1988)

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 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, these guidelines are applied 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(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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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.

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

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 classified information or is associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them, and the following are potentially applicable:

(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 classified 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 mere possession of close family ties with relatives living in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if an applicant, his or her spouse, or someone sharing living quarters with them, has such a relationship with even one person living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. ISCR Case No. 08-02864 at 4-5 (App. Bd. Dec. 29, 2009). Additionally, 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. ISCR Case No. 17-04208 at 4 (App. Bd. Aug. 7, 2019).

AG ¶¶ 7(a) and 7(f) require evidence of a "heightened risk." The "heightened risk" required to raise one of these disqualifying conditions is a relatively low standard. It denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant's ties to a foreign country as well as each individual tie must be considered.

A heightened security risk is established by the administratively noticed facts about Iraq, especially the human rights concerns, risks of terrorism, and ongoing instability. Applicant maintains regular contact with his two brothers (B1 and B2) who are citizens and resident of Iraq. Applicant's third brother (B3) also maintains his Iraqi citizenship and works in the neighboring country of Saudi Arabia. Applicant's father-in-law, while long retired, previously worked as an Iraqi police officer. Applicant's connections to Iraq are sufficient to establish security concerns under AG ¶¶ 7(a) and 7(b).

Applicant also maintains a property interest, shared with his brothers, in the family home in Iraq. While the value of the property is unknown, it is substantial enough that Applicant has expressed an ongoing desire to protect it and stated that it is the reason he has maintained his Iraqi citizenship. Security concerns under AG ¶ 7(f) are established.

AG ¶ 8 provides conditions that could mitigate security concerns under Guideline B, including the following which 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.

From about October 2003 through 2006, Applicant worked on several infrastructure projects in Iraq on behalf of U.S. Government interests. He received at least two credible threats during that work. For his service, his SIV application was approved and he immigrated to the United States in 2012. Even though it is unclear whether he lived in Iraq or UAE in 2013, he has lived in the United States since at least 2014 and has not returned to Iraq. He has obtained an advanced degree and is developing his career in the United States. His wife is a U.S. citizen and both of his children are native-born U.S. citizens. His in-laws are also U.S. citizens. These are all factors that weigh in Applicant's favor.

Comparatively, all five of Applicant's brothers live outside of the United States. He has two brothers who still reside in Iraq and he communicates with them regularly. Having previously been threatened himself while in Iraq, Applicant has acknowledged general safety concerns for his brothers since the living situation in Iraq is difficult. An applicant who has already been identified and threatened, possibly by a terrorist organization, is someone who may well encounter such threats in the future and thereby be pressured to compromise national security information. See, e.g., ISCR Case No. 17-02862 at 4 (App. Bd. May 22, 2018); ISCR Case No. 22-00364 at 4 (June 22, 2023). B3 also lives and works in neighboring Saudi Arabia and maintains his Iraqi citizenship. Applicant has not provided sufficient evidence to rebut the presumption that he has ties of affection for, or obligation to, these three brothers. Additionally, he has not provided sufficient evidence to find that it is unlikely that he 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. None of the mitigating conditions are applicable to SOR ¶¶ 1.a and 1.d.

Applicant also maintains an interest in property in Iraq. Despite his statements that he will soon reach a settlement with his brothers, he still maintains his Iraqi citizenship to protect his financial interest in this property. Although the financial value of the property is unknown, he has not established that this interest is such that it is unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure him. None of the mitigating conditions are applicable to SOR ¶ 1.b.

However, Applicant's father-in-law is a U.S. citizen residing in the United States. While he previously worked as an Iraqi police officer, he retired in 1993 and has not returned to Iraq since immigrating to the United States in 2009. He maintains no ongoing connection to the Iraqi government and no defined ties to Iraq. It is unlikely that Applicant's relationship with his father-in-law will place Applicant in a position of having to choose between the interests of a foreign individual, group or government and the interests of the United States. AG ¶ 8(a) is applicable to SOR ¶ 1.c.

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 in my whole-person analysis.

Applicant did not request a hearing and I did not have the opportunity to question him further about his family connections to Iraq or to assess his credibility by observing his demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). However, the record reflects that Applicant previously received threats while working in Iraq on behalf of U.S. Government interests. Following the approval of an SIV application, he has resided in the United States since 2014. His wife is a U.S. citizen and they have two young children who are U.S. citizens. He has stated that he is committed to raising his family in the United States.

Still, Applicant has a close relationship with his five brothers, all of whom live outside of the United States. Two of these brothers still face the challenges of living in Iraq where conditions place them at a heightened risk. Also, Applicant has yet to resolve his interest in the family property in Iraq that he clearly values.

While there is nothing unusual about Applicant's relationship with his family members in Iraq, his present circumstances are such that he could be placed in an untenable position of having to choose between the interests of a loved one and the United States. "Application of the guidelines 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." See ISCR Case No. 08-10025 at 4 (App. Bd. Nov. 3, 2009). Based on the facts and circumstances before me, concerns of undue foreign influence persist.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant did not mitigate the foreign influence security concerns.

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.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Bryan J. Olmos
Administrative Judge