



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 23-01279 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: *Pro se*

08/08/2024

---

**Decision**

---

GARCIA, Candace Le'i, Administrative Judge:

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

**Statement of the Case**

On July 28, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence. The action was taken under Executive Order 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) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on August 25, 2023, and she elected to have her case be decided on the written record in lieu of a hearing. The Government's written case was submitted on November 9, 2023. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns.

Applicant received the FORM on January 19, 2024, and she did not submit a response. The case was assigned to me on June 10, 2024.

The Government exhibits identified as Items 1 through 4 are admitted in evidence without objection. Department Counsel requested that I take administrative notice of certain facts about Iraq (Item 5). I marked this request as Hearing Exhibit (HE) I. It is not admitted in evidence, but I have taken administrative notice of the facts contained therein, as summarized in the Findings of Fact, below.

### **Findings of Fact**

Applicant admitted all the SOR allegations. She is 59 years old, widowed, and does not have any children. She married her spouse, a native-born U.S. citizen and former U.S. military servicemember, in Turkey in 2010, and he passed away in September 2014. She has owned her home in the United States since October 2018. (Items 3-4)

Applicant was born in Iraq. She graduated from high school in 1984, received diplomas in 1994 and 1998, and earned a bachelor's degree in 2002. From 2010 to 2011, she worked for her spouse's company in Iraq but left to care for her ill mother, who passed away in April 2014. During this time, she was supported by her spouse until his death, and then she was supported by her family. (Items 3-4)

In 2015, at age 49, Applicant immigrated to the United States on a special immigration visa (SIV). She was supported by her sister-in-law and brother-in-law until she obtained part-time employment in 2015. She worked part time for a humanitarian aid organization, a state university, and a community college from 2015 to 2019. She then worked full time for a social services organization from 2019 to 2022 and then briefly for a mental health services company in 2022. Since her June 2022 background interview, she has worked as a part-time tutor at a state university. She has never held a security clearance. (Items 3-4)

Applicant is a dual citizen of Iraq and the United States. She became a naturalized U.S. citizen in October 2020. She was issued a U.S. passport in December 2020, and it is not scheduled to expire until December 2030. She was also issued an Iraqi passport in 2021, and it is not scheduled to expire until 2029. She used her Iraqi passport to travel to Iraq to visit her family, as further discussed below. (Items 3-4)

Applicant's mother, father, one brother, and one brother-in-law are deceased. Her other two brothers and her two sisters are citizens and residents of Iraq. (SOR ¶ 1.a) Her brothers are retired, one sister is unemployed, and the other sister is a counselor. She maintains weekly telephonic contact with the younger of her two sisters and monthly telephonic contact with her other siblings in Iraq. (Items 1-4)

Applicant also has two brothers-in-law and two sisters-in-law who are citizens and residents of Iraq. Her brothers-in-law work as a factory worker and an officer, respectively, one sister-in-law is retired, and her other sister-in-law is unemployed. She

maintains monthly telephonic contact with her brothers-in-law and her last contact with her two sisters-in-law was when she visited family in Iraq in 2022. (Items 1-4)

Applicant saw her family in Iraq when she traveled there in 2016, 2021, and 2022. On occasion, she sends her family in Iraq \$100 or \$200 when they need it. Applicant complied with reporting requirements, to include reporting her family in Iraq in her SCA, during her background interview, and in her Answer. Appellant's siblings-in-law are not alleged in the SOR. Thus, they may not be an independent basis for denying Applicant's clearance. However, they may be considered to evaluate Applicant's credibility; to evaluate her evidence of extenuation, mitigation, or changed circumstances; to decide whether a particular provision of the Adjudicative Guidelines is applicable; or to provide evidence for the whole-person analysis. I have considered these unalleged family members for these limited purposes. (Items 1-4)

Applicant owns a home in Iraq with an approximate value of \$400,000 USD. (SOR ¶ 1.b) She previously co-owned this home with her mother until her mother's passing in 2014, when she became the sole owner. She also owns an apartment in Iraq, which she purchased in 2014 for \$20,000 USD. During her June 2022 background interview, she estimated its value as \$160,000 USD. (SOR ¶ 1.c) After her father died in 2002, she has received a retirement benefit of \$150 monthly from the Iraqi government. (SOR ¶ 1.d) She indicated during her background interview that her brother holds this money for her and then sends it to her in the United States. She will continue to receive this benefit until her death. (Items 1-4)

## **Iraq**

Iraq is a constitutional parliamentary republic. The October 2021 parliamentary elections were generally considered technically sound and credible. The elections were observed by the European Union and domestic civil society organizations and monitored by the United Nations Assistance Mission for Iraq. Domestic and international elections observers cited procedural and transparency improvements to the 2018 electoral process. They noted, however, that violence and intimidation by paramilitary militia groups in the months ahead of the elections likely affected voters' choices and voter turnout. The elections came because of widespread protests that began in October 2019 and led to the resignation of former Prime Minister Adil Abd al-Mahdi in December 2019. On October 13, 2022, Iraqi Council of Representatives members elected Abdulatif Jamal Rashid as the president of Iraq. On October 27, 2022, the Council of Representatives confirmed Mohammed Shiaa al-Sudani as prime minister along with 21 of 23 of his cabinet ministers. On December 3, 2022, the Council of Representatives confirmed Sudani's two remaining cabinet ministers.

The U.S. Department of State travel advisory for Iraq is Level 4: Do not travel due to terrorism, kidnapping, armed conflict, civil unrest, and Mission Iraq's limited capacity to provide support to U.S. citizens. U.S. citizens in Iraq face high risks to their safety and security, including the potential for violence and kidnapping. Terrorist and insurgent groups regularly attack Iraqi security forces and civilians. Anti-U.S. militias threaten U.S. citizens and international companies throughout Iraq.

Islamic State in Iraq and Syria, also known as ISIS, ISIL, or Da'esh, 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.

Iraq is among those countries effected by the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015. Under this Act, no foreign national may enter the United States without a visa if they have "been present, at any time on or after March 1, 2011," in Iraq, Syria, or any country designated by the U.S. Government as either a state sponsor of terrorism or as a "country of concern." As defined in the Act, countries of concern include those which have "a significant [foreign terrorist organization] presence," provide "a safe haven for terrorists," and/or present other conditions such that an individual's "presence . . . increases the likelihood that [they are] a credible threat to the national security of the United States."

Significant human rights issues included credible reports of: unlawful or arbitrary killings, including extrajudicial killings by the government; forced disappearances by the government; torture and cruel, inhuman, and degrading treatment or punishment by the government; harsh and life-threatening prison conditions; arbitrary arrest and detention; arbitrary or unlawful interference with privacy; punishment of family members for offenses allegedly committed by an individual; serious abuses in a conflict, including attacks resulting in civilian deaths and harm; serious restrictions on free expression and media, including violence or threats of violence against journalists, unjustified arrests and prosecutions against journalists, censorship, and existence of criminal libel laws; serious restrictions on internet freedom; substantial interference with the freedom of peaceful assembly and freedom of association; restrictions on freedom of movement of women; forced returns of internally displaced persons to locations where they faced threats to their lives and freedom; threats of violence against internally displaced persons and returnee populations perceived to have been affiliated with ISIS; serious government corruption; lack of investigation and accountability for gender-based violence; crimes involving violence targeting members of ethnic minority groups; crimes involving violence or threats of violence targeting lesbian, gay, bisexual, transgender, queer, and intersex persons; significant restrictions on worker freedom of association; and the existence of the worst forms of child labor.

## **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 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(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." 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 avoided drawing 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 as to obtaining 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 that an applicant may deliberately or inadvertently fail to 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 10865 provides that 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, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. *See generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

AG ¶ 7(a) requires substantial evidence of a "heightened risk." The "heightened risk" required to raise one of these disqualifying conditions is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. Applicant's two brothers and two sisters are Iraqi citizens residing in Iraq. Applicant maintains contact with her family in Iraq, and she recently traveled there to visit them in 2022. Although she owns her home in the United States, she also owns two properties in Iraq and receives a monthly benefit from the Iraqi government. ISIS, ISIL, or Da'esh, is a designated terrorist organization that is active near the Iraq border. The U.S. Department of State issued a Level 4 travel advisory for Iraq, advising U.S. persons not to travel to Iraq due to terrorism, kidnapping, armed

conflict, civil unrest, and Mission Iraq's limited capacity to provide support to U.S. citizens. Significant human rights issues are present in Iraq. Her family and property in Iraq create a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. AG ¶¶ 7(a), 7(b), and 7(f) have been raised by the evidence.

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;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; 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.

AG ¶ 8(a) is not established for the reasons set out in the above discussion of AG ¶¶ 7(a) and 7(b). Applicant maintains contact with her family in Iraq and she traveled there as recently as 2022 to visit them. AG ¶ 8(c) is not established. Although she owns her home in the United States, she also owns two properties in Iraq and receives a monthly benefit from the Iraqi government. AG ¶ 8(f) is not established. Applicant complied with reporting requirements, to include reporting her family in Iraq in her SCA, during her background interview, and in her Answer. AG ¶ 8(e) applies.

Applicant has lived in the United States since 2015, when she immigrated here on an SIV. However, the grant of an SIV does not, *de-facto*, equate to eligibility for access to classified information. See ISCR Case No. 23-01225 (App. Bd. July 11, 2024), *citing* ISCR Case No. 16-02061 at 2 (App. Bd. Sept. 19, 2018); ISCR Case No. 16-01900 at 2 (App. Bd. 4 Apr. 19, 2018); ISCR Case No. 16-00024 at 2 (App. Bd. Nov. 9, 2017). Indeed, the circumstances giving rise to the SIV may, themselves, reflect security

concerns. See e.g., ISCR Case No. 16-01900 at 2, 3. Applicant is a naturalized U.S. citizen with a U.S. passport, and she also owns property in the United States. These are factors that weigh in Applicant's favor. However, Applicant's ties to her family and property in Iraq are as strong. Applicant failed to meet her burden to demonstrate that she would resolve any conflict of interest in favor of the U.S. interest. AG ¶ 8(b) 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(a):

- (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. After weighing the disqualifying and mitigating conditions under Guideline B and evaluating all the evidence in the context of the whole person, I conclude Applicant did not mitigate the security concerns raised by her foreign connections. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

|                           |                   |
|---------------------------|-------------------|
| Paragraph 1, Guideline B: | AGAINST APPLICANT |
| Subparagraphs 1.a-1.d:    | Against Applicant |



## **Conclusion**

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

---

Candace Le'i Garcia  
Administrative Judge