



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



In the matter of:)
)
) ISCR Case No. 24-00930
)
Applicant for Security Clearance)

Appearances

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

12/23/2024

Decision

PRICE, Eric C., 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

On July 11, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B. (Item 1) The DCSA acted 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 adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

On August 7, 2024, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing. (Item 2) Department Counsel submitted the Government’s written file of relevant material (FORM), dated August 20, 2024, including evidence identified as Items 1 through 4. Applicant received the FORM on August 30, 2024. He was afforded an opportunity to file objections and submit material in

refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not submit a response to the FORM or object to the Government's documents. The case was assigned to me on November 25, 2024. The Government's documents are admitted into evidence.

Administrative Notice

Department Counsel requested that I take administrative notice of relevant facts about Iraq. (Hearing Exhibit (HE) I) I took administrative notice as requested. The facts administratively noticed are set out below in my findings of fact.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations and his admissions are incorporated in my findings of fact.

Applicant is 46 years old. He was born in Iraq and performed mandatory military service in the Iraqi Army from March 1998 to March 2001. He entered the United States in July 2012 and was naturalized as a U.S. citizen in August 2018. He has passports issued by the U.S. and Iraq. He earned a high school diploma in 2019 and earned a truck driver training certificate. He has never been married and has no children. He has lived with his girlfriend since May 2022. She was born in Kuwait and is a naturalized U.S. citizen. (Items 3-4)

Appellant has worked as a part-time cultural role player for various companies since August 2016 and has been self-employed as a ridesharing contractor since March 2021. He reported working in the U.S. as a truck driver from February to September 2019, as a delivery driver from January 2016 to August 2018, and in retail sales from October 2012 to June 2016. He served as an interpreter in Iraq for coalition forces at an unspecified time for an unspecified period. (Items 3-4)

The SOR alleges security concerns under Guideline B based on Applicant's family connections to Iraq. (SOR ¶¶ 1.a-1.c) His three sisters and four brothers are citizens and residents of Iraq. He and his siblings co-own a home in Iraq valued at about \$120,000 that they inherited from their father. His siblings all live in the same town, and he communicates with them via telephone. His three sisters are teachers. He communicates with two sisters monthly and with his third sister quarterly. Two of his brothers are self-employed, and he communicates with them monthly. One brother is a policeman, and they have not spoken since February 2021. His fourth brother works for the Iraqi Department of Agriculture, and they speak annually. He provides financial support to one of his brothers about once a year and sent his brother approximately \$300 in mid-2023. (Item 3 at 28-41; Item 4 at 5-6, 9-11)

Applicant lived in a home owned by his father in Iraq from February to June 2015 and from September 2019 to February 2021 for reasons not specified in the record. It appears that if he is granted eligibility for access to classified information his sponsor will

require him to live and work in Iraq. He withdrew about \$12,000 from a U.S. bank account in March 2023 to buy a car. He had about \$8,500 in a U.S. bank account as of November 2023. (Item 3 at 11-13, 43, 46-47, 56; Item 4 at 10-11)

Iraq is a constitutional parliamentary republic. Iraqi parliamentary elections in 2021 generally met international standards of free and fair elections and led to a peaceful transition of power. The Department of State travel advisory for Iraq is Level 4: “Do not travel to Iraq due to terrorism, kidnapping, armed conflict, civil unrest, and Mission Iraq’s limited capacity to provide support to U.S. citizens.” (HE I)

The Islamic State in Iraq and Syria, also known as ISIS, is a designated terrorist organization that controls some areas of Syria on the Iraqi 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.

The human rights situation worsened during 2023 due to increased Iraqi Government and Kurdistan Regional Government restrictions on fundamental freedoms. Significant human rights issues include extrajudicial killings, forced disappearances, torture, arbitrary detention, punishment of family members for offenses allegedly committed by an individual, and widespread official corruption. Iraqi citizens are not eligible for travel to the United States under the Visa Waiver program, which permits citizens of certain countries to travel to the United States for business or tourism for up to 90 days without a visa.

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

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 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. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

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); see also ISCR Case No. 18-00496 at 3 (App. Bd. Nov. 8, 2019) (citations omitted).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see also AG ¶ 2(b).

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.

Applicant admitted his three sisters and four brothers are citizens and residents of Iraq, and that he co-owns a home in Iraq valued at about \$120,000 with his seven siblings.

The following disqualifying conditions under AG ¶ 7 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 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 information provided in HE I identifies significant terrorism concerns, ongoing human rights problems, and other security concerns about Iraq. I considered the totality of Applicant's ties to Iraq and his seven siblings who are residents and citizens of Iraq.

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. When foreign family ties are at issue, the totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003).

AG ¶¶ 7(a) and 7(b) are established. The activities of terrorists, criminal gangs, and local militias in Iraq are sufficient to demonstrate the heightened risk in AG ¶ 7(a) and the potential conflict of interest in AG ¶ 7(b).

AG ¶ 7(f) is established. Applicant's financial interest in a home he co-owns with his seven siblings in Iraq valued at \$120,000 is a substantial financial or property interest.

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 person, 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. interests;

(c) contact or communication with foreign citizens is so casual or infrequent that there is little likelihood that it could create a risk of 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.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sep. 24, 2013), the DOHA Appeal Board explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15.

Applicant's monthly contact with two of his sisters and two of his brothers, quarterly contact with a third sister, and annual contact with a third brother is not casual or infrequent. There is insufficient evidence about his fourth brother's employment as a policeman in Iraq, their ties, and other information that would be helpful in analyzing the depth of their relationship. There is also insufficient evidence about why Applicant lived in Iraq from February to June 2015 and from September 2019 to February 2021, that would be helpful in analyzing whether the foreign influence concern might be mitigated.

As for Applicant's U.S.-based assets, he owns a car worth at least \$12,000 and has about \$8,500 in a bank. However, there is insufficient evidence to analyze whether the value of his financial and property interest (about \$15,000) in a home in Iraq is such that it is unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure him.

Although there is not a question as to Applicant's loyalty to the United States, it is unreasonable and unrealistic to ask him to choose between the interests of his siblings and those of the United States if there were a conflict of interest. Based on the limited

record, I am unable to find that it is unlikely that Applicant would be placed in a position of having to choose between his siblings and the interests of the United States. Because Applicant requested a determination on the record without a hearing, I had no opportunity to question him about his siblings and the issues raised by his contact or financial interests, or to evaluate his credibility. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). Without amplifying information, none of the mitigating conditions apply.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guideline B in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I have also considered Applicant's education, employment history as a cultural role player since August 2016, and that he served as a local interpreter in Iraq for coalition forces for an unspecified period.

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 failed to meet his burden of persuasion. The record evidence leaves me with questions and doubts as to his eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns raised under Guideline B.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

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

Conclusion

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

Eric C. Price
Administrative Judge