



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



In the matter of: )  
)  
) ISCR Case No. 24-00609  
)  
Applicant for Security Clearance )

**Appearances**

For Government: John C. Lynch, Esq., Department Counsel  
For Applicant: *Pro se*

11/20/2024

**Decision**

BENSON, Pamela C., Administrative Judge:

Applicant did not successfully mitigate the risks of foreign influence raised by his familial ties with Iraq. Eligibility for access to classified information is denied.

**Statement of the Case**

On April 29, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence). This action was taken under Executive Order (EO) 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 implemented by the DOD on June 8, 2017.

On May 17, 2024, Applicant responded to the SOR (Answer) and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) Judge. On July 2, 2024, a notice of hearing was issued, scheduling the hearing for August 6, 2024. The hearing proceeded as scheduled. Department Counsel submitted two documents, which

I admitted as Government Exhibits (GE) 1 and 2, without objection. Department Counsel also submitted materials for administrative notice concerning Iraq, which I accepted as Administrative Notice (AN) I, without objection. The administrative notice materials are included in the record to show the basis for concluding that the noticed facts are well known, generally accepted within the U.S. Government, or are not subject to reasonable dispute. Applicant testified, and he submitted 10 documents labeled as Applicant's Exhibits (AE) A through J, which were admitted into evidence without objection.

During the hearing, I offered to hold the record open for three weeks in the event either party wanted to supplement the record. Applicant timely submitted a certificate of appreciation, e-mail communications, a redacted DOHA case decision (ISCR No. 20-02566), and factual information about the country of Pakistan, which I labeled as AE K through N and admitted into evidence without objection. DOHA received the transcript on August 13, 2024, and the record closed on August 28, 2024.

### **Findings of Fact**

The SOR alleges foreign influence security concerns based on Applicant's family members and foreign government connections in Iraq. In his Answer, Applicant admitted all of the SOR allegations. (SOR ¶¶ 1.a through 1.h.) After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 33 years old. He was born in Baghdad, Iraq. He worked as a linguist for the U.S. military in Iraq from approximately August 2011 to May 2014. He lived on U.S. military bases 27 days out of the month. Every six months he was required to go through a vetting process to ensure his continuing loyalty and to determine that he did not present any danger to the troops on base. In June 2014, he immigrated to the United States, after receiving support from several U.S. military members, and especially a U.S. Navy base commander, during his immigration process as a refugee. (Answer; GE 1; AE C; Tr. 18-26, 31, 57)

Applicant obtained an associate degree from a community college in 2020, and he continued his studies until he received his bachelor's degree in about 2022. He became a U.S. naturalized citizen in June 2020. While enrolled in college, Applicant accepted an intern position with a large DOD contractor. In January 2023, he was hired by the contractor for full-time employment. In about July 2024, he was promoted to software engineer. Applicant is unmarried, but he lives with his girlfriend and her two young daughters from another relationship. This is his first application for a DOD security clearance. (Answer; GE 1; Tr. 18-26)

### **Foreign Influence**

SOR ¶ 1.a alleges that Applicant's mother is a citizen and resident of Iraq. Applicant has never returned to Iraq after leaving in 2014. He testified that he has considered returning to Iraq to see his mother before she passes away. She is in her early 70s, and she has been diagnosed with some health issues. He left her \$10,000 when he

left Iraq in June 2014. After his arrival in the United States, he has sent his mother about \$3,000 in financial support. Applicant communicates with his mother approximately weekly to check on the status of her health and well-being. She is unaware that he is in process for a DOD security clearance. (Answer; Tr.41, 44-49)

SOR ¶ 1.b alleges that Applicant's four brothers are citizens and residents of Iraq. He communicates with different brothers approximately monthly. They are unaware that he is in process for a DOD security clearance. He has a brother, who suffers from schizophrenia, and he currently lives with their mother. (Tr. 48-50)

SOR ¶ 1.d alleges that one of Applicant's remaining three brothers works as an advisor to a senior government official in Iraq. Applicant stated that his brother started this position in approximately December 2022, and he continues in this role to the present time. His brother has a Ph.D. in political science, and he also works as a college professor at a university in Iraq. (Answer; Tr. 51-55)

SOR ¶ 1.e alleges that another brother works for the Iraqi Ministry of Oil. This brother has been working as an electrical engineer since approximately 2005. This is an Iraqi government employment position. (Tr. 56-57)

SOR ¶ 1.f alleges that another brother works for the Iraqi Ministry of Interior Federal Police. Applicant admits this brother is a technical employee, possibly working with information technology (IT) and internet activities. This employment is considered an Iraqi government employment position. (Tr. 57-59)

SOR ¶ 1.c alleges that Applicant's three sisters are citizens and residents of Iraq. One of his sisters regularly assists his mother, to include when his mother is attempting to contact Applicant. His mother is unfamiliar with IT and the apps used for their long-distance exchange, and his sister helps her coordinate this task as well. Applicant communicates with this sister on an approximately weekly basis while he is also communicating with his mother. He does not have regular contact with his other two sisters. Applicant is uncertain if they are currently employed. (Tr. 49-50, 62-63, 66)

SOR ¶ 1.g alleges that Applicant's brother-in-law, a citizen and resident of Iraq, formerly worked as a diplomat for the Iraqi Embassy from about 2005 to 2008. Applicant testified that he rarely has contact with this brother-in-law. (Tr. 62-64; Answer)

Another brother-in-law is a citizen and resident of Iraq, and he works as a software engineer for an Iraqi government agency connected with its military from about 2004 to the present. Applicant does not communicate very often with his brother-in-law. (SOR ¶ 1.h) (Tr. 64-65; Answer)

In 2006, Applicant's father was killed by a suspected Iranian-linked militia for an unknown reason. His father and a neighbor were shot in front of the family home. Applicant also reported that about a month after his father was murdered, a city mayor and a relative on his father's side of the family, was kidnapped and murdered by terrorists.

Applicant explained that in 2003, when the U.S. military initially arrived in Iraq, the first form of foreign government the U.S. military tried to partner with was through local city mayors in Iraq. The U.S. military would work with local city mayors by providing aid and support for the cities. Applicant believes this relative was murdered because he had cooperated with the U.S. military. Applicant testified that if any of his family members were threatened due to his possession of a DOD security clearance and protected information, he believed it would already be a foregone conclusion that the family member was dead, or soon to be murdered. He would stop all contacts with the terrorist and report the incident to his security manager. (Tr. 33, 39-40; Answer)

Applicant stated that two days after he departed Iraq in June 2014, a terrorist organization, ISIS, took control over half of the country of Iraq. He does not have any foreign business activities, property, or financial interests in Iraq. He has no loyalty to the government of Iraq. He graduated with a college degree after he came into the United States. He now owns a home, and all of his assets and net worth are situated in this country. He also testified that Iranian-backed militias remain a problem in Iraq. (Tr. 35-37; Answer)

### **Character Evidence**

Applicant submitted several letters of recommendation from U.S. military members. These letters were dated from 2011 to 2014 and were used by Applicant to get approval for his immigration into the United States. All of the military members attested to Applicant's expertise as a linguist and faithful service to U.S. Forces in Iraq, despite that his service put him and his family members at risk. Applicant also provided a September 2013 Certificate of Appreciation from a Site Lead of a U.S. military base in Iraq. (AE C, D, E, F, K)

Applicant also provided positive employee performance reviews for 2021 from another employer, his 2022 intern performance review with the DOD contractor, and his 2023 performance review by his current employer. The most recent review stated, "[Applicant] has demonstrated that he is a good team member, an able developer, and continues to grow his knowledge, skill, and contributions on the development team." (AE H, I, J)

Applicant also provided a favorable Guideline B DOHA decision concerning the country of Pakistan, and he attached factual information about the country of Pakistan and their relationship to the United States. I gave due consideration to the DOHA case that Applicant has cited in support of his arguments for mitigation, but the decision is neither binding precedent nor sufficient to change my analysis. I did not find this information fully relevant to this case due to it having a very different fact pattern. (AE L, M, N)

## **Administrative Notice**

I have taken administrative notice of the following facts concerning Iraq:

The Federal Republic of Iraq (Iraq) is a constitutional parliamentary republic. The U.S. Department of State warns U.S. citizens not to travel to Iraq due to terrorism and armed conflict. U.S. citizens in Iraq are at high risk for violence and kidnapping. Numerous terrorist and insurgent groups are active in Iraq and regularly attack both Iraqi security forces and civilians. The Islamic State in Iraq and Syria (ISIS), a designated terrorist organization, remains a threat to public safety in Iraq. Additionally, criminal gangs and local militia pose a potential threat to U.S. citizens. In February 2022, the U.S. Director of National Intelligence (DNI) concluded that, given the ongoing presence of ISIS and Iraqi Shia militias, Iraq will likely face a lengthy period of political turmoil and conflict. (AN I)

Iraq's most significant human rights abuses are largely fueled by the terrorist activities of ISIS; however, some Iraqi security forces were alleged to have engaged in unlawful killings, disappearances and extortion, torture, life-threatening conditions in detention and prison facilities, and arbitrary arrest and detention. (AN I)

The United States' commitment to Iraq is balanced against the inherent dangers of the ongoing conflict in Iraq to its citizens and residents from terrorists and significant human rights issues. (AN I)

## **Policies**

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 to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in 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."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is

responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant 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.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B: Foreign Influence**

The security concern under this guideline is set out in AG ¶ 6 as follows:

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.

Two disqualifying conditions under this guideline are relevant to this case:

AG ¶ 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

AG ¶ 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.

"The United States has a compelling interest in protecting and safeguarding [sensitive] information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). To establish AG ¶ 7(a), the Government must demonstrate a "heightened risk" of exploitation due to Applicant's contacts with his family members in Iraq. Given the presence and activities of several terrorist organizations hostile to the interests of the United States in Iraq, the Government has established the requisite "heightened risk" and potential conflict of interest regarding Applicant's contacts with his mother, sister, and brothers in Iraq. Three of his four brothers work for the Iraqi Government, to include one working as an advisor to a senior government official in Iraq. AG ¶¶ 7(a) and 7(b) apply. The Government did not establish a "heightened risk" of exploitation due to Applicant's rare and sporadic contact with two of his sisters and his two brothers-in-law.

The following mitigating conditions under this guideline are potentially relevant:

AG ¶ 8(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;

AG ¶ 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; and

AG ¶ 8(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.

Not every foreign contact or tie presents the heightened risk consideration. The "heightened risk" denotes a risk greater than the normal risk inherent in having a family member or a spouse's family member living under a foreign government. The nature and strength of the family ties or other foreign interests and the country involved (i.e., the nature of its government, its relationship with the United States, and its human rights record) are relevant in assessing whether there is a likelihood of vulnerability 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 on, the foreign government; or the country is known to conduct

intelligence operations against the United States. In considering the nature of the foreign government, the administrative judge must take into account any terrorist activity in the country at issue. See generally ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

Terrorist organizations pose an ongoing and critical threat to U.S. interests in Iraq, which Applicant also admitted during his hearing. Applicant's three brothers are employed in positions directly connected to the Iraqi government and likely to cause a conflict of interest. Applicant actively maintains close relationships with his mother, one sister, and brothers in Iraq.

Security-clearance determinations are predictive judgments as to whether an individual will safeguard classified information. The DOHA Appeal Board has identified "an exception in Guideline B cases in which applicants demonstrate that they have made significant contributions to national security in dangerous, high-risk circumstances." ISCR Case No. 10-05329 at 3 (App. Bd. Oct. 17, 2011). In this case, Applicant demonstrated his significant contributions to national security while serving in high-risk combat environments for more than three years. Several U.S. military personnel attested to Applicant's work performance and character in dangerous environments. The letters of recommendation were particularly compelling in their support of Applicant's character and service on behalf of the United States. Notwithstanding Applicant's family members in Iraq, he has forged deep relationships with U.S. government and military personnel, such that he can be expected to resolve any conflict of interest in favor of the U.S. interest, should any conflict arise. In this instance, however, Applicant's brothers working for the Iraqi Government, especially one in a high-level position, is worrisome.

I considered the totality of Applicant's ties to Iraq, the nature of its government, its relationship with the United States, and its human rights record, all of which are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. Applicant's extended family members in Iraq "could be a means through which Applicant comes to the attention of those who seek U.S. information or technology and who would attempt to exert coercion upon him." ADP Case No. 14-01655 at 3 (App. Bd. Dec. 9, 2015) (citing ISCR Case No. 14-02950 at 3 (App. Bd. May 14, 2015)). His relationships with family members who are living in Iraq create a potential conflict of interest because terrorists could place pressure on his family in an effort to cause Applicant to compromise classified information. His father was murdered in Iraq, and about a month later, a family relative working as a city mayor with U.S. military forces was kidnapped and murdered too. I find Applicant's relationships create "a heightened risk of foreign inducement, manipulation, pressure, or coercion" under AG ¶ 7. Overall, the facts show there is a possibility that Applicant could be placed in a position of having to choose between the interests of his foreign family members and the interests of the United States. His ties to the United States are not enough to fully mitigate the risk of undue foreign influence. AG ¶¶ 8(a), 8(b), and 8(c) do not apply.



## Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant has family connections to Iraq, which, given current geopolitical circumstances and risks from terrorists, presents a heightened risk. Three of his brothers are employed by the Iraqi Government, to include one working as an advisor to a high-level official. The evidence supports that Applicant's bonds of affection for his family members in Iraq are ongoing, and his three brothers are employed in positions that are likely to cause a conflict of interest. His regular and frequent contacts with family members in Iraq are manifestations of his care and concern for relatives living in that country. Although he has made a new life for himself in the United States, that consideration is not sufficient to fully mitigate the risk of undue foreign influence. It is important to make clear to Applicant that security clearance decisions must be made in terms of the national interest and shall in no means be a determination of his loyalty to the United States. The evidence convincingly shows that Applicant is committed to the best interests of the United States, and his past service provided to the U.S. troops in Iraq was honorable.

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. Applicant's connections to Iraq are substantial and ongoing, and they raise significant security matters. After a careful review of the documents and testimony in the record, I conclude foreign influence security concerns are not mitigated. Eligibility for access to classified information is denied.

## 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, 1.d-1.f:	Against Applicant
Subparagraph 1.c:	Against Applicant for one sister he maintains regular contact
Subparagraphs 1.g and 1.h:	For Applicant

## Conclusion

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

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Pamela C. Benson  
Administrative Judge