



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



In the matter of:)
)
) ISCR Case No. 23-00653
)
)
Applicant for Security Clearance)

Appearances

For Government: John Hannink, Esq., Department Counsel
For Applicant: *Pro Se*

02/06/2024

Decision

BORGSTROM, Eric H., Administrative Judge:

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

Statement of the Case

On April 12, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence). The CAS acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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.

In Applicant's April 27, 2023 response to the SOR, he admitted, with explanations, SOR ¶¶ 1.a., 1.b., 1.c., and 1.e. He admitted in part and denied in part the allegation in SOR ¶ 1.d. He attached ten exhibits, which will be discussed below. He requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge.

I was assigned this case on July 14, 2023. On August 1, 2023, DOHA issued a Notice of Hearing, scheduling a hearing by video teleconference for September 14, 2023. The hearing proceeded as scheduled. The Government proffered two exhibits, which I admitted as Government Exhibits (GE) 1 and 2. The Government proffered a six-page request of facts for administrative notice regarding the Republic of Iraq (Iraq), including the relevant source materials. Applicant testified and submitted 18 exhibits, which I admitted as Applicant Exhibits (AE) A through R without objection. At Applicant's request, I held the record open until September 29, 2023, to provide him an opportunity to supplement the evidentiary record. DOHA received the hearing transcript. (Tr.) on September 22, 2023. On September 26, 2023, Applicant submitted one post-hearing exhibit, which I admitted as AE S without objection. The record closed on September 29, 2023.

Findings of Fact

Applicant is 41 years old. He was born in Iraq, and he earned a bachelor's degree in engineering in Iraq. He was married in February 2011 and divorced in January 2021. He has two children, ages 11 and 10. He became a naturalized U.S. citizen in August 2018. He was granted a trustworthiness determination in March 2022. (GE 1; Tr. 18-20; AE D-G, L-M)

From 2004 to 2006, Applicant was employed by the Iraqi Ministry of Water Resources. From June 2006 to July 2008, he was employed by a private company in the United Arab Emirates (UAE). From July 2008 to May 2014, he lived in Qatar, where he was employed as a project manager for a private company. From May 2014 to May 2015, Applicant was unemployed and living in the United States. From May 2015 to October 2018, he was employed full time as a civil engineer and inspector for three private companies in the United States. (GE 1; AE D-G; Tr. 18-20, 74).

From October 2018 to January 2019, Applicant was unemployed and living in Qatar. From January 2019 to July 2021, he was employed as a construction manager for a private company in Qatar. From August 2021 to April 2022, he lived in the United States and was employed as a resident engineer representative for a private company. (GE 1; Tr. 69)

From August 2022 to July 2023, Applicant was unemployed and living in Baghdad with his parents. He spent his time caring for his ill parents and transporting his father to medical appointments. Since returning to the United States, Applicant has resumed his employment as a resident engineer representative for a private company. (Tr. 20, 69)

SOR ¶¶ 1.a. and 1.b. Applicant's elderly parents are citizens and residents of Iraq, and they reside in a home in Baghdad. Prior to April 2022, Applicant had weekly telephonic contact with his parents. He lived with them in Iraq from August 2022 to July 2023, while caring for his father. At the hearing, Applicant characterized his relationship with his parents as "normal," and that he currently had monthly telephonic contact with

them. Applicant's father is a retired structural engineer. (GE 1-2; AE R; Tr. 22-23, 39-43, 52, 73)

SOR ¶ 1.c. Applicant has one sister who is a citizen of Iraq and who resides in northern Iraq, in Kurdistan. She is married, and her husband is from northern Iraq. She has applied for refugee status with the United Nations. As of April 2022, Applicant had monthly telephonic contact with his sister. The frequency of his contacts decreased while Applicant was in Iraq caring for his father; however, Applicant received regular updates about his siblings through his mother. Applicant had one in-person contact with his sister during his recent trip to Iraq. There is no record evidence as to his sister's husband's occupation. Applicant characterized his relationships with all four siblings as "normal." (GE 1-2; Answer; Tr. 24-25, 35, 37, 39-43, 46-47)

SOR ¶ 1.d. Applicant has a brother who is a dual citizen of Iraq and Finland and who resides in Finland. This brother is married with two children, and he is unemployed. As a refugee, he receives benefits through the Finnish Government. As of April 2022, Applicant had monthly telephonic contact with this brother; however, the contacts decreased while Applicant was in Iraq. Applicant estimated that he now has contact with his brother about two or three times a year, and he most recently had telephonic contact with his brother in August 2023. (GE 1-2; Answer; AE O, AE S; Tr. 25-26, 31, 35, 39-43)

SOR ¶¶ 1.e. Applicant has a brother who is a citizen of Iraq and who resides in the UAE. As of April 2022, Applicant had monthly telephonic contact with this brother. The frequency of these contacts decreased while Applicant was in Iraq caring for his father. Applicant estimated that he now had contact with his brother about two or three times a year. (GE 1-2; Answer; AE P-Q; Tr. 26, 33-35, 39-43)

Applicant has a second sister who is a citizen of and resides in the United States. Applicant's ex-wife is a U.S. citizen. She has remarried, and she resides with Applicant's two children, her new husband, and her parents in Qatar. Applicant most recently saw his children in 2021. Applicant maintains a U.S. savings account with a balance of approximately \$16,500 as of April 2023. There is no evidence of any foreign assets or accounts. (GE 1; AE C; Tr. 19, 28, 59, 67)

Applicant submitted three character-reference letters. Two longtime friends described Applicant as "a person of high integrity, loyalty, and trustworthiness" and "very responsible, ambitious, and dedicated." A former supervisor praised Applicant's honesty and professionalism. (AE H; AE K)

Facts for Administrative Notice

Iraq

I have taken administrative notice of the following facts concerning the Republic of Iraq (Iraq) excerpted from the materials proffered by Department Counsel:

Iraq is a constitutional parliamentary republic, and international election monitors generally considered its 2021 parliamentary elections to be technically sound and credible. Notwithstanding these favorable elections, the U.S. Department of State has issued a Level 4 travel advisory instructing U.S. citizens not to travel due to terrorism, kidnapping, armed conflict, and civil unrest. Anti-U.S. militias threaten U.S. citizens and international companies throughout Iraq. (AN I)

Terrorist organizations remain active in Iraq. The Islamic State in Iraq and Syria (ISIS) is a designated terrorist organization that 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 government control. ISIS, militia groups, and criminal gangs target U.S. citizens for attacks and hostage-taking. Although ISIS was most active in rural areas, it claimed responsibility for three suicide bombers in Baghdad in January 2021 and July 2021. The Kurdistan Workers' Party (PKK), a designated terrorist group primarily located in the mountains of northern Iraq, conducted multiple attacks in the Iraqi Kurdistan Region in 2021. (AN I)

In February 2023, the U.S. Office of the Director of National Intelligence reported that Iranian-supported proxies sought to launch attacks against U.S. forces and persons in Iraq and Syria. Iraqi Shia militias will continue to pose a credible threat to U.S. forces in Iraq and the region. The ODNI further noted that ISIS's insurgency in Iraq and Syria continued to rebuild its capabilities and replenish its ranks. (AN I)

Human rights issues remain a concern, including: 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, arbitrary arrest and detention; and serious restrictions on free expression and media. (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(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."

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 sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive 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). 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 coercion.

To establish AG ¶ 7(a), the Government must demonstrate a "heightened risk" of exploitation due to Applicant's contacts with parents and siblings who are citizens of Iraq and who reside in Iraq, Finland, and the UAE. The materials for administrative notice concerning Iraq detail the significant security concerns raised by the active terrorist organizations and the Iranian-supported proxies in Iraq, coupled with the human rights issues involving the Iraqi government and the terrorist organizations within Iraq. "An applicant with family members living in a country hostile to the U.S. has a very heavy burden to show that they are not a means through which the applicant can be subjected to coercion or exploitation." ISCR Case No. 11-12659 at 3 (May 30, 2013). The Government has established a "heightened risk" required under AG ¶ 7(a). Given the active, capable, and hostile entities within Iraq, Applicant must overcome the "very heavy burden" to show that his foreign family members are not a means through which he may be influenced or coerced. AG ¶¶ 7(a) and 7(b) apply.

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.

The administrative notice materials detail the security concerns regarding Iraq. The U.S. Department of State has advised U.S. citizens against any travel due to terrorism, kidnapping, armed conflict, and civil unrest. These dangers extend to both Baghdad, where Applicant's parents reside, and to northern Iraq, where his sister resides. AG ¶ 8(a) does not apply to Applicant's parents and sister in Iraq or his brother in the UAE. Given Applicant's one brother's Finnish citizenship and residency (SOR ¶ 1.d.), AG ¶ 8(a) applies only as to that relative.

Applicant has maintained a close and continuing relationship with his parents and siblings. As recently as April 2022, he maintained weekly telephonic contact with his parents and monthly contact with his siblings. From August 2022 to July 2023, he lived with and cared for his parents in Iraq, bringing his father to medical appointments. Even when the frequency of his telephonic contact decreased, due to his focus on his father's health, he was regularly updated about his siblings by his mother.

Applicant's ex-wife and two children are U.S. citizens; however, they have resided overseas for several years. She has remarried and has established their lives in the UAE. Applicant's only family member in the United States is his sister, and he provided references from two longtime friends and one professional contact. Applicant himself has only lived and worked in the United States for about five years - May 2014 to October 2018; August 2021 to August 202-2; and since July 2023 - with the majority of his professional endeavors overseas. Applicant has not established deep and longstanding relationships in the United States, and he has maintained close relationships with his parents and siblings. Therefore, AG ¶¶ 8(b) and 8(c) do not apply. Applicant did not mitigate the foreign influence security concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of trust 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 excelled professionally both in the United States and overseas. His friends and former supervisor praised Applicant's integrity, loyalty, trustworthiness, and professionalism. Applicant's close relationships with his foreign relatives is evidenced by his dutiful care of his parents in Iraq from August 2022 to July 2023. He maintains close contact with his parents and siblings overseas, and he has not demonstrated deep and longstanding relationships in the United States. He has not overcome the "very heavy burden" to show that his foreign family members are not a means through which he may be influenced or coerced. Applicant has not mitigated 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.-c:	Against Applicant
Subparagraph 1.d.:	For Applicant
Subparagraph 1.e.:	Against 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 the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Eric H. Borgstrom
Administrative Judge