DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 25-00645
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Jenny Bayer, Esq., Department Counsel
For Applicant: *Pro se*

07/31/2026

Decision

DORSEY, Benjamin R., Administrative Judge:

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

Statement of the Case

Applicant completed and certified security clearance applications on October 3, 2020 (2020 SCA) and on March 1, 2024 (2024 SCA). On July 21, 2025, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence) and Guideline J (criminal conduct). Applicant provided a response to the SOR on August 9, 2025 (Answer) and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

The case was assigned to me on April 1, 2026. Despite being provided appropriate notice, Applicant failed to appear for the hearing that was originally scheduled on May 18, 2026. He contacted me the next day and asked to reschedule his hearing because he had written down the wrong date. I granted his request and rescheduled the hearing for June 16, 2026.

The hearing was convened as rescheduled on June 16, 2026. I admitted Government Exhibits (GE) 1 through 6 and Applicant Exhibit (AE) A, without objection. DOHA received a transcript (Tr.) of the hearing on June 24, 2026.

Preliminary Matters

During preliminary matters, Department Counsel moved to amend the SOR by revising the allegations in SOR ¶ 1.e to read as follows: "[f]rom about 2011 until 2013, you were a member of a Kurdistan counterterrorism group in Iraq." While it was difficult to ascertain the nature of Applicant's objection, if any, he seemed to object to the SOR amendment because he disagreed with it factually. I overruled his objection as amendments to the SOR are to be liberally granted in order to conform to the evidence. The SOR was amended, as indicated. I offered Applicant the option of a continuance of the hearing to another date in order to give him the opportunity to respond to the SOR amendment, but he chose to proceed without a continuance. (Tr. 10-13)

On the Government's motion, without objection, I took administrative notice of certain facts about the Republic of India (AN I) and the Republic of Iraq (AN II), as of December 2025, as contained in official U.S. Government documents. (Tr. 13-15)

Findings of Fact

Applicant is a 37-year-old naturalized U.S. Citizen. He has an employment offer from a U.S. defense contractor that is conditioned upon his being granted security clearance eligibility. He also works for a ridesharing company. He was born in Iraq to Iraqi parents. He has an associate's degree from an Iraqi university that he earned in 2011. Applicant first came to the U.S in 2013 on a special immigration visa based, in part, on his having assisted U.S. forces as a translator while working for a U.S. government contractor from 2007 until 2011, during the Iraq war. He was released by the government contractor on good terms in 2011 after the U.S. military drawdown in Iraq, and received commendations and certificates of appreciation for his work. From 2011 until about 2013, he was a member of a Kurdistan counterterrorism group in Iraq (SOR ¶ 1.e). These forces were not part of the Iraqi military. Instead, they were a separate military branch in Iraq. He was paid by this counterterrorism group to act as a translator while it searched for high value targets and terrorists. He became a naturalized U.S. citizen in October 2018. He holds both U.S. and Iraqi citizenships. He does not hold a valid Iraqi passport. He last traveled to Iraq from August 2023 until October 2023, when he stayed with his parents for 30 days. He used his U.S. passport for this travel. (Tr. 26-27, 30-39, 50-51, 61-63; Answer; AE A)

Applicant has been married to a citizen of India (SOR ¶ 1.a) since about October 2017, although they were separated from about November 2023 until about February 2024. They met in the U.S. in 2014 while his wife was residing here on a student visa. She has held a Permanent Resident Card (PRC) since about April 2026 that is valid until 2036. She also applied for a PRC in 2018, but her application was denied in 2020. While it is not alleged in the SOR, Applicant's mother-in-law and father-in-law are citizens of India residing in India. His wife has not visited India since about 2014. Her parents own a convenience store, and he does not know whether they have ties to the Indian government. He testified that he has never spoken to them because they do not approve of him, and he does not know much about them. His wife has contact with her parents about once or twice per month. He has no children. (Tr. 52-65; Answer; AE A)

In October 2018, Applicant legally changed his name for his safety when he travels to Iraq to visit his family, as he believes there are people in Iraq who know him and would hurt him because of his previous work as a translator for the U.S. military. He testified that he does not trust security or police in Iraq because “they could sell you out quickly,” and he wants to avoid people knowing he is in the city because it would be easy for “them to find me.” He clarified that neither he nor his family had been threatened. (Tr. 30-31; Answer; AE A)

Applicant’s mother is a citizen and resident of Iraq (SOR ¶ 1.b). She is a retired schoolteacher who receives a pension from the Iraqi government. She has no other form of income. He has contact with his mother daily via text or social media. (Tr. 42-50; Answer; GE 1-3)

Applicant’s father is a citizen and resident of Iraq (SOR ¶ 1.c). He is a retired schoolteacher who receives a pension from the Iraqi government. He has no other source of income. He served as a first lieutenant in the Iraqi army during the war between Iraq and Iran in the 1980s. His service was compulsory. He owns a small farm in Iraq. Applicant does not know the value of the farm, but he stands to inherit a portion of it. Applicant has contact with his father daily via text or social media. Once he realizes his interest in the farm, his plan is to have one of his cousins maintain the property. He testified that he does not think it is safe for his parents in Iraq and wants to have them immigrate to the U.S. (Tr. 40-42, 48-49; Answer; GE 1-3)

Applicant’s sister is an Iraqi citizen residing in Germany (SOR ¶ 1.c). She moved to Germany from Iraq in 2022. Her residency in Germany is dependent upon her husband’s work visa there, where he is employed as a chef. Her husband is a citizen of Iraq, and neither he nor Applicant’s sister hold citizenship from any other country. If her husband’s German work visa becomes invalid, they will return to Iraq. Applicant believes that his sister has applied for some other form of German residency, but he is unsure of that information. He has contact with his sister weekly. It is not alleged in the SOR, but Applicant also has a grandmother who is a citizen and resident of Iraq. He claimed his family does not know that he is trying to obtain security clearance eligibility. (Tr. 42-50; Answer; GE 1-3)

Applicant owns no property in the U.S or in Iraq. He does not own a car. He has no family members who are citizens of the U.S. Other than two trips to Iraq, the latest being from August 2023 until October 2023, he has resided in the U.S. since 2013. He has no savings. He has voted in U.S. elections since 2017. (Tr. 65-67)

While working for a ridesharing service, in June of 2023, Applicant met an individual (Mr. B) who offered him a job with Mr. B’s company performing tile flooring work. Applicant was not doing well financially and was looking for extra income, so he agreed to work for Mr. B. Applicant had no experience or training with tiling, but Mr. B said he would train him. Instead of having Applicant work on tiling, Mr. B asked Applicant to pick his “family” up from a Walmart in State A and drive them to another city about an hour and a half away. Mr. B provided him with a minivan and Applicant performed the task. While he was not sure, he suspected the individuals he drove were in the U.S. illegally because they only spoke Spanish and did not seem to be part of Mr. B’s family. Applicant performed the same type of work two other times, for a total of three times in three days. There is evidence that before the second time he transported people, he knew that he was transporting individuals who were in the country illegally. He drove those individuals on these two occasions despite this knowledge, because he needed the money. (Tr. 27-28, 67-74; Answer; GE 2-4)

On the third trip, Mr. B paid Applicant $1,000 to pick up several individuals from an alley near Mr. B’s house. He was transporting one individual in the front seat and several in the back of the minivan. While he was driving these individuals, he was stopped by police because the vehicle he was driving did not have a valid registration. When police stopped him, they noticed the woman in the front seat, but not the people in the back of the minivan. They asked Applicant how many people were in the car, and he told him it was just him and the woman in the passenger seat. He did not mention the individuals in the back of the minivan because he was afraid for them. (Tr. 27-28, 67-74; Answer; GE 2-4)

Authorities arrested Applicant and charged him with transportation of illegal aliens for profit, a felony, and accessory after the fact-knowingly assisted certain illegal aliens from being apprehended by law enforcement . . . . He agreed to a plea bargain where authorities dismissed the transportation of illegal aliens for profit charge, and he pleaded guilty to the accessory after the fact charge, which is a Class B petty offense. He was sentenced to 30 days in prison with credit for time served. He completed the terms of his sentence. (Tr. 27-28, 74-80; Answer; GE 2-4)

In March 2023, while working for a rideshare service, Applicant was waiting to pick up a customer outside a hotel when he had an altercation with two individuals who turned out to be employees of the hotel. He said that he was on edge and carrying a pistol because he had recently saved a woman from a sex-trafficking ring and was worried that he was being retaliated against. He claimed that an individual came up to his car and started tapping on the driver’s side window with a box cutter. Applicant claimed that he cracked his window and told the individual that he was picking up a customer, but the individual did not say anything. Instead, he stated the individual started banging and kicking his car, and then another car sped in and stopped in front of him. The driver of the car that sped in front of him got out of his car and opened Applicant’s car door. Applicant, fearing for his safety, pulled out his pistol, loaded a round, and pointed it at the individual that opened his car door. He claimed that the person who opened his car door had a knife or a box cutter. The individual who opened the door turned out to be a valet who worked for the hotel. This hotel worker filed a criminal complaint against Applicant and police arrested him and charged him with aggravated assault, a third-degree felony. The district attorney decided not to prosecute the case and the charges were dropped. Applicant’s understanding is that the charges were dropped because the prosecutor agreed that he was justified to pull his gun out because he acted in self-defense. (Tr. 27-28, 80-87; Answer; GE 5-6)

Applicant provided character-reference letters dated in 2008, 2010, and 2011 related to his performance and reliability as a translator from members of the U.S. military. Some of these letters were written in support of his special-immigration visa application. The writers describe the danger Applicant and his family experienced, and would experience in the future, if he stayed in Iraq because of the work he performed to assist the U.S. military. They did not believe he would present a national security threat if he was awarded a special immigrant visa. He also provided documents showing that he has completed various training programs related to information technology, security, Arabic-Iraqi cultural orientation, and that he complied with travel security requirements. (AE A)

Republic of India

In AN I, the Government included information from executive branch agencies about the United States' relations with India and the current conditions in that country as of December 2025. I take administrative notice of the information contained in those documents including, but not limited to:

India is a constitutional democracy, whose Constitution defines it as a sovereign, socialist, secular democratic republic. It is a multiparty, federal, parliamentary democracy with a bicameral parliament and it has a history of respecting the rights of its citizens. However, there have been reports of extrajudicial killings of persons in custody, disappearances, torture and rape by police and security forces, who generally enjoy de facto immunity. (AN I)

India experiences terrorist and insurgent activities that impact not only Indian citizens and residents, but U.S. visitors as well. Anti-western terrorist groups (some on the U.S. Government's list of foreign terrorist organizations) are active in India. These organizations include Islamist extremist groups such as Harkut-ul-Jiad-i-Islami; Harakat ul-Mujahidin, Indian Mujahideen, Jaish-e-Mohammed, and Lashkar-e Tayyiba. Reported attacks have occurred during the busy evening hours in markets and other crowded places and can occur at any time and place. Terrorists in Jammu and Kashmir, northeastern states, and Maoist terrorism affected areas committed abuses, including killing 20 security personnel and 18 civilians in Jammu and Kashmir. (AN I)

According to the U.S. Department of Justice, there have been multiple criminal cases concerning securities fraud, industrial espionage, and import-export enforcement related to India. These crimes include, *inter alia*, conspiracy to commit securities and wire fraud and substantive securities fraud in a multi-billion-dollar scheme to obtain funds from investors and financial institutions on the basis of false and misleading statements, the theft of proprietary software and sensitive databases from the U.S. government, and the unlawful exportation of defense articles on the U.S. Munitions List from the United States to China, India, and elsewhere. (AN I)

The U.S. Department of State has issued a Level 2 Exercise Increased Caution travel advisory for India, advising U.S. nationals to exercise increased caution in India due to crime and terrorism. The Department of State has issued a Level 4 Do Not Travel advisory to the union territory of Jammu and Kashmir except for visits to the eastern Ladakh region and its capital, Leh, due to terrorism and civil unrest; India-Pakistan Border due to potential for armed conflict; parts of Central and East India due to terrorism; and to Manipur, due to the threat of violence and crime. The Department of State has issued a Level 3 Reconsider Travel advisory for the Northeastern States due to terrorism and violence. (AN I)

Republic of Iraq

In AN II, the Government included information from executive branch agencies, about the United States' relations with Iraq and the current conditions in that country as of December 2025. I take administrative notice of the information contained in those documents including, but not limited to:

The U.S. Department of State travel advisory for Iraq is Level 4: “Do not travel to Iraq due to terrorism, kidnapping, armed conflict, civil unrest, and the U.S. Government's limited ability to provide emergency services to U.S. citizens in Iraq.” U.S. citizens in Iraq face high risk of violence and kidnapping. Terrorist and insurgent groups regularly attack Iraqi security forces and civilians. Anti-U.S. militias threaten U.S. citizens. U.S. Government personnel in Iraq live and work under strict security due to serious threats. The Islamic State in Iraq and Syria, known as ISIS, ISIL, or Da'esh, is a designated terrorist organization active in Iraq. Iran-aligned militia groups encourage and conduct attacks against the U.S. presence in Iraq. (AN II)

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. (AN II)

Policies

This case is adjudicated 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 (AG), which became effective on June 8, 2017.

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 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
>
> (g) unauthorized association with a suspected or known agent, associate, or employee of a foreign intelligence agency.

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. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member or friend is associated with or dependent upon the government, the country is known to conduct intelligence collection operations against the United States, or the foreign country is associated with a risk of terrorism.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified 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 administratively noticed country conditions in India and Iraq, such as terrorism, civil unrest, intelligence collection against the U.S., and their human-rights records, raise the security concerns related to his Indian and Iraqi family members to the level of a heightened risk. Applicant's Indian and Iraqi family members create a potential conflict of interest between his obligation to protect classified or sensitive information or technology and his desire to help a foreign person, group, or country by providing that information or technology. Application of the Guideline B adjudicative 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. (ISCR Case No. 08-10025 at 4 (App. Bd. Nov. 3, 2009).

Applicant’s wife is a citizen of India residing in the U.S. who holds a PRC that is valid until 2036. Despite the fact that she resides in the U.S., she has parents who are citizens and residents of India. Applicant’s connection with his wife imputes upon him a close and continuing relationship with her parents, which by the nature of the country conditions in India, and its relationship with the U.S., creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Applicant’s connection with his wife also creates 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. AG ¶¶ 7(a) and 7(b) apply to SOR ¶ 1.a.

Applicant's mother and father are citizens and residents of Iraq. Both of his parents are reliant on Iraqi government pensions as their sole source of income. Applicant has acknowledged that it is dangerous for both him and his family in Iraq because of the assistance he provided to the U.S. military. He changed his name because of this danger. Applicant's connection to his Iraqi parents residing in Iraq presents a potential conflict of interest. AG ¶¶ 7(a) and 7(b) apply to SOR ¶¶ 1.b and 1.c.

Applicant’s sister is a citizen of Iraq residing in Germany since 2022. As SOR ¶ 1.d alleges that she resides in Iraq, that portion of the allegation is not proven by substantial evidence. Absent unusual factual circumstances not applicable here, Germany is not typically a country where country conditions or its relationship to the U.S. government raises the risk of coercion, persuasion, or duress to the level of a heightened risk. AG ¶ 7(a) is not established by the allegations in SOR ¶ 1.d. However, Applicant’s connection to his sister, who is solely an Iraqi citizen, meets the burden of providing substantial evidence of a potential conflict of interest between his obligation to protect classified or sensitive information or technology and his desire to help a foreign person, group, or country by providing that information or technology. For example, regardless of where she resides, his sister could be leveraged by the Iraqi government or terrorist groups operating within Iraq through their control of her and her parents. Granted, those groups’ control of her directly is reduced by her residing in Germany. However, as she has no right to permanent residence in any country other than Iraq, that control is still significant. AG ¶ 7(b) is established by the allegation of her being a citizen of Iraq in SOR ¶ 1.d.

As Applicant was paid by and performed duties for a Kurdish counterterrorism group in Iraq, Applicant once was employed by that entity. He has not been affiliated with that group in about 13 years. There is insufficient evidence that this former membership creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion, AG ¶¶ 7(a) and 7(b) do not apply to SOR ¶ 1. e. However, as the foreign group by which he was employed searched for and sought out terrorists and high value targets, there is evidence that it used intelligence for these purposes. Therefore, that Kurdish counterterrorism group in Iraq could be considered a foreign intelligence entity. AG ¶ 7(g) is established.

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; 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.

At the outset, I find that Applicant's employment and contact with the Kurdish counterterrorism group from 13 years ago is so casual that there is little likelihood that it could create a risk for foreign influence or exploitation. I find he has mitigated the security concerns with respect to the allegations in SOR ¶ 1.e.

Applicant's sister has resided in Germany since 2022. Germany is a staunch U.S. ally and has a democratically elected government. While his sister resides in Germany, despite it being possible, I find it unlikely that Applicant will be placed in a position of having to choose between her interests and the interests of the United States. I find he has mitigated the allegations in SOR ¶ 1.d.

Country conditions in India and Iraq raise security concerns to the level of a heightened risk. Applicant's wife's parents are citizens and residents of India. Applicant has parents and a grandmother who are citizens and residents of Iraq. He has not provided sufficient evidence to rebut the presumption that his bonds are close with these family members. His parents are reliant on the Iraqi government for income. He has acknowledged that he believes that he is in danger when he travels to Iraq, and that his parents are in danger in Iraq. While he does not currently own any property in Iraq, his inheritance rights potentially involve property interests there. He has no family who are citizens of the United States and his only family member who resides here is his wife, who is a permanent resident. He owns no property in the U.S., so the value of his U.S. based property is not significant when compared to his potential property rights in Iraq. He has indicated that he struggles to make a living in the U.S because he broke the law because he needed the money. While he has shown loyalty to the U.S. by acting as an interpreter despite the danger involved, given his lack of ties to the U.S., I do not find that those ties outweigh his bonds of affection to his family members in India and Iraq. I find that he has failed to provide sufficient evidence that any of the Guideline B mitigating conditions apply with respect to his parents or his wife's parents.

Guideline J, Criminal Conduct

The security concern for criminal conduct is set out in AG ¶ 30:

> Criminal activity creates doubt about an Applicant's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

> (b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

There is substantial evidence, in the form of police records, court records, and testimony, that, in June 2023 Applicant engaged in criminal conduct on multiple occasions when he drove individuals who were in the country illegally in exchange for money. There is also substantial evidence in the form of police records that he engaged in criminal activity in March 2023 when he pointed a cocked and loaded handgun at an individual from inside his car. AG ¶ 31(b) is established.

Conditions that could mitigate criminal conduct security concerns are provided under AG ¶ 32. The following are potentially applicable:

> (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
>
> (c) no reliable evidence to support that the individual committed the offense; and
>
> (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Authorities decided not to prosecute Applicant for the criminal conduct alleged in SOR ¶ 2.b, to wit: charges of felony aggravated assault. While it is unclear from the records exactly why authorities dropped the charges against him, the underlying circumstances present a possible legal justification that he acted in self-defense. For this reason, I find that there was no reliable evidence that Applicant committed the alleged offense, and I find in his favor with respect to SOR ¶ 2.b.

I do not find that he has provided sufficient evidence in mitigation for his criminal conduct alleged in SOR ¶ 2.a. While it has been about three years since he was arrested for transporting individuals in the country illegally, I do not find that his criminal behavior is unlikely to recur. He knowingly engaged in this criminal behavior because he needed money. He provided insufficient evidence to prove that he is in a better financial position than he was when his financial needs overcame his willingness to comply with the law. AG ¶ 32(a) does not apply.

The three years that have passed without recurrence of criminal activity and Applicant's compliance with the terms of his sentence provide some evidence of successful rehabilitation. AG ¶ 32(d) applies, but it is not sufficient to overcome the serious nature of the offense, his dishonesty when questioned by police, and his knowing willingness to engage in the criminal conduct for financial gain.

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 Guidelines B and J in my whole-person analysis. I have also considered Applicant's assistance to the U.S. military while working as a translator during the Iraq war and his positive character evidence. However, the presence of some mitigating evidence, including the applicability of certain mitigating conditions that I have discussed herein, does not compel a favorable adjudication. Instead, I must weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable, or vice versa. Overall, the record evidence leaves me with questions and doubts about

Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the foreign influence or criminal conduct 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 through 1.c:	Against Applicant
Subparagraphs 1.d and 1.e:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Benjamin R. Dorsey
Administrative Judge