

KEYWORD: Foreign Influence; Criminal Conduct; Personal Conduct

DIGEST: Applicant demonstrated that his family members living in Iraq were not agents of a foreign government or so situated as to provide a point of influence on Applicant. However, Applicant's deliberate falsification of his clearance application in February 2003 makes him unsuitable for a security clearance. Clearance denied.

CASENO: 04-09637.h1

DATE: 06/07/2007

DATE: June 7, 2007

In Re:	)	
	)	
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SSN: -----	)	ISCR Case No. 04-09637
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
JOHN GRATTAN METZ, JR**

**APPEARANCES**

**FOR GOVERNMENT**

J. Theodore Hammer, Esquire, Department Counsel  
James B. Norman, Esquire, Deputy Chief Department Counsel

**FOR APPLICANT**

Sheldon I. Cohen, Esquire

**SYNOPSIS**

Applicant demonstrated that his family members living in Iraq were not agents of a foreign government or so situated as to provide a point of influence on Applicant. However, Applicant's deliberate falsification of his clearance application in February 2003 makes him unsuitable for a security clearance. Clearance denied.

### **STATEMENT OF THE CASE**

Applicant challenges the 25 May 2005 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of foreign influence, criminal conduct, and personal conduct.<sup>1</sup> Applicant submitted an undated answer in October 2005, and requested a hearing. DOHA assigned the case to me 20 March 2006, and I convened a hearing 8 May 2006. DOHA received the transcript 17 May 2006.

### **PROCEDURAL RULINGS**

At the hearing, Department Counsel moved to withdraw allegation 1.d. to conform with the evidence adduced at hearing. Applicant did not object, and I granted the motion (Tr. 208).

### **FINDINGS OF FACT**

Applicant admitted the SOR allegations, except SOR 2.b. Accordingly, I incorporate those admissions as findings of fact. He is a 48-year-old translator for a defense contractor seeking access to classified information.

Applicant was born in Iraq in 1949. He grew up there and was educated there, obtaining an associate's degree in textile technology. When he lived in Iraq he made clothes.

In 1980, he fled Iraq, fearing for his life because he was a Chaldean Christian. He initially went to Greece, but eventually immigrated to the U.S. through the World Council of Churches in 1983. He has resided in the U.S. since. He became a naturalized U.S. citizen in April 1991.

In September 1991, Applicant flew to Jordan to meet the woman his parents had arranged for him to marry. She is also a Chaldean Christian. They were married in Jordan in October 1991, and she immigrated to the U.S. in March 1992. She became a naturalized U.S. citizen in February 1996.

Applicant has a sister who is a resident citizen of Iraq. He has had no personal contact with her since he left Iraq in 1980, and has not spoken to her by telephone since 1991. Applicant also has two siblings who are citizens of Iraq, but who are legal permanent residents of the U.S., residing in the U.S. Applicant's wife has two sisters, both citizens of Iraq. One lives in Iraq, the other is a legal

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<sup>1</sup>Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).

permanent resident of Holland, residing in Holland. She has had no contact with the sister in Iraq since 1991.

In November 1992, Applicant was arrested for trafficking drugs in the second degree and possession of drugs, both felonies in the state where he was arrested. He was ultimately not charged by the county prosecutor.

The pertinent circumstances of the arrest are these. Applicant was arrested in November 1992 while driving an automobile rented by his employer from the west coast to the mid-west city where Applicant was employed. The employer was arrested at the same time while driving an automobile rented by Applicant. The employer had apparently been under surveillance for drug trafficking by the law enforcement officials who made the vehicle stops. Illegal drugs were seized from the vehicles.

Applicant worked as a cashier in the business owned by his employer. He claims that he was asked by the employer to fly to the west coast to help bring back clothing to the employer's business. This is interesting given that the employer's business was variously described as a liquor store or an auto parts store. Applicant had previously made one trip for the employer, and was handsomely remunerated for his efforts. Applicant was apparently not charged by the prosecutor after his arrest because the employer was the focus of the law enforcement investigation. However, discrepancies between Applicant's testimony about the circumstances of the transactions, his statement (G.E. 2), and the police report (G.E. 5), suggest that Applicant was not as unaware as he claims about his employer's activities.

Iraq is currently a republican, federal, democratic, and pluralistic government, with power shared among the federal and regional governments. The previous government systematically repressed the Shiite Muslim majority and undermined non-Muslim religious groups, but since 2003 the government has advocated tolerance for, and acceptance of, religious minorities. Notwithstanding the government's policies, Iraq remains besieged by sectarian violence.

Applicant applied for an industrial clearance in February 2003 (G.E. 1). He answered "no" to a question (#21) requiring him to disclose any felony charges or convictions, and a question (#24) requiring him to disclose any drug charges or convictions, both of which required him to disclose the November 1992 arrest. Applicant maintains that he revealed this arrest to the company employee who was assisting him with his clearance application (not the facility security officer). He claims that this employee told him that he did not have to disclose the arrest. Similarly, he asserts that he disclosed this arrest to the investigator who later interviewed him about his clearance, but the investigator was only interested in Applicant's foreign relatives. The facility security officer at the time of Applicant's clearance application testified credibly that applicant's were instructed to answer their applications truthfully, and that adverse answers were screened with management to ascertain if management wanted to send the application forward for investigation. The investigator who took Applicant's sworn statement (G.E. 3, which contains no reference to the arrest) testified credibly that his job is to record potentially adverse information disclosed by an applicant, and not to pre-screen such information. Under the circumstances, I find Applicant's explanation for his omissions not credible.

### **POLICIES AND BURDEN OF PROOF**

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline B (Foreign Influence), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.<sup>2</sup>

## CONCLUSIONS

The government established a minimal case for disqualification under Guideline B, by demonstrating that he has a sister who is a resident citizen of Iraq, albeit one he has had not contact with since 1991 and has not seen since 1980. The government's evidence fails to raise security concerns regarding his two siblings who are legal permanent residents of the U.S. (1.b.) or his two sisters-in-law, one of whom is a legal permanent resident of Holland, and the other of whom has had no contact with the family since 1991 (1.c.)

The plain language of the stated concerns and disqualifying factors of Guideline B may (or may not) raise concerns and may (or may not) be disqualifying. This language implies that mere citizenship of, or residence in, a foreign country of an immediate family member does not automatically establish the disqualifying conditions precedent to shift the burden to Applicant to mitigate the government's case.

In this case, the evidence establishes that Applicant has had no contact with his one sibling living in Iraq since 1991. Iraq is currently a dangerous place to live, and Applicant generally worries about his sister's safety. However, a generalized threat to her safety is greatly distinct from the risk

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<sup>2</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

that an entity, governmental or otherwise, would or could exploit her connection to Applicant to obtain sensitive information. Thus, I conclude that it is extremely unlikely Applicant can be pressured based on his sister living in Iraq. I resolve Guideline B for Applicant.

The government established a case for disqualification under Guideline J disqualifying conditions 1 and 2,<sup>3</sup> but Applicant mitigated the security concerns, as regards his November 1992 arrest, which was over 14 years ago and was related to conduct that has not recurred. However, Applicant's deliberate falsification of his February 2003 clearance application demonstrates his willingness to mislead the government regarding his criminal record. I resolve Guideline J against Applicant.

The government also established a case for disqualification under Guideline E disqualifying condition 2,<sup>4</sup> and Applicant did not mitigate the security concerns. Applicant provided false answers on his clearance application in February 2003. Given the testimony of the company facility officer, I consider it extremely unlikely that the company would have sent his application forward if it had been aware of the 1992 drug arrest. Similarly, I consider it extremely unlikely that the investigator would have omitted the drug arrest from Applicant's sworn statement if Applicant's had disclosed it during the subject interview. Applicant's conduct demonstrates a lack of candor required of cleared personnel and suggests he is willing to put his personal needs ahead of legitimate government interests. The government has an interest in examining all relevant and material adverse information about an applicant before making a clearance decision, and relies on applicants to truthfully disclose that adverse information. Further, an applicant's willingness to report adverse information about himself provides some indication of his willingness to report inadvertent security violations or other security concerns in the future, something the government relies on in order to perform damage assessments and limit the compromise of classified information. I resolve Guideline E against Applicant.

### **FORMAL FINDINGS**

#### Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph a:	For Applicant
Subparagraph b:	For Applicant
Subparagraph c:	For Applicant
Subparagraph d:	Withdrawn

#### Paragraph 2. Guideline J: AGAINST APPLICANT

Subparagraph a:	For Applicant
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<sup>3</sup>E2.A10.1.2.1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged; E2.A10.1.2.2. A single serious crime or multiple lesser offenses.

<sup>4</sup>E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

Subparagraph b: Against Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph a: Against Applicant

Subparagraph b: Against Applicant

**DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance denied.

**John G. Metz, Jr.  
Administrative Judge**