



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



In the matter of: )  
)  
) ISCR Case No. 05-01554  
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Applicant for Security Clearance )

**Appearances**

For Government: Fahryn E. Hoffman, Department Counsel  
For Applicant: *Pro Se*

July 16, 2008

**Decision**

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HEINY, Claude R., Administrative Judge:

Applicant is an Iraqi born, naturalized U.S. citizen, who has lived in the United States since 1992, when he came to the U.S. as a refugee. He supported military operations in Iraq on multiple occasions deploying with U.S. Army units. Applicant's siblings are citizens and residents of Iraq. He has substantially more connections to the United States than to Iraq. After a thorough review of the case file, pleadings, exhibits, and evidence, I conclude Applicant has rebutted or mitigated the government's security concerns under Guideline B, foreign influence. Eligibility for access to classified information is granted.

**Statement of Case**

Applicant contests the Defense Department's intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued to

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<sup>1</sup> Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative

Applicant a Statement of Reasons (SOR) on August 8, 2005, detailing security concerns under Guideline B, foreign influence.

On August 20, 2005, Applicant answered the SOR, and requested a hearing before an administrative judge. On March 3, 2008, I was assigned the case. On May 7, 2008, DOHA issued a notice of hearing scheduling the hearing held on May 20, 2008. The government offered Exhibits (Ex.) 1 and 2, which were admitted into evidence. Applicant testified on his own behalf and submitted Exhibits A through E, which were admitted into evidence. The record was kept open to allow Applicant to submit additional matters. On May 26, 2008 and May 29, 2008, additional documents were received. Department Counsel did not object to the material and it was admitted into evidence as Ex. F and G. On June 5, 2008, the transcript (Tr.) was received.

## **Procedural and Evidentiary Rulings**

### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Iraq. Applicant did not object to administrative notice. The request and the attached documents were not admitted into evidence but were included in the record as Hearing Exhibits (HEx) I—VI. The facts administratively noticed are set out in the Findings of Fact, below.

## **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a and 1.b of the SOR.

Applicant is a 45-year-old linguist and cultural advisor who worked for a defense contractor and is seeking to maintain a security clearance. Applicant was a dedicated and tireless worker who was willing to perform any assignment 24 hours a day. (Ex. D) As an Arabic interpreter for coalition forces in support of Operation Iraqi Freedom his quick thinking and ability to translate Arabic into English made him an integral part of the success of the unit. He was a great asset to his unit. He received a certificate of appreciation for his work from January 2003 to May 2003. (Ex. E)

An FBI special agent, assigned to Baghdad, Iraq states Applicant is a hard working family man who is very loyal and grateful to the U.S. for allowing him to relocate here as a refugee. (Ex. F) The special agent believes Applicant would be an asset to any U.S. military unit he would be assigned as a linguist.

In 1963, Applicant was born in southern Iraq an anti-Saddam part of Iraq. (Tr. 18, 76) After completing primary school and high school, Applicant went to a military academy. In 1985, after nine months he graduated and became an officer in the Iraqi army. Because of the shortage of officers due to the Iraq/Iran war, the training period

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guidelines (AG) approved by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

was reduced from three years to nine months. (Tr. 23) In 1991 was promoted to first lieutenant. In 1991, when Saddam invaded Kuwait, Applicant went home to southern Iraq and did not participate in the war. (Tr. 25) In 1991 following the defeat of the Iraqi military, Applicant joined the unsuccessful uprising against the Saddam Hussein regime. (Tr. 19) The uprising lasted two weeks before it was forcefully and brutally suppressed. Facing execution if caught, Applicant left the country by surrendering to coalition forces. (Tr. 77) He was 28 years old. (Tr. 49) When Applicant left Iraq he automatically lost his Iraqi citizenship under Iraqi law. (Tr. 52)

Applicant stayed in a POW camp in Saudi Arabia for 17 months before coming to the U.S. as a refugee in August 1992. (Tr. 19) In May 1998, he became a naturalized U.S. citizen. His parents are deceased. His father was a farmer and his mother a homemaker. (Tr. 57, 58) In 1997, he married a native born U.S. citizen and they have two children born in the U.S., a boy age seven and a half and a girl age six. (Tr. 47, 81) Applicant has a U.S. passport, which is the only passport he has ever had. (Tr. 22, 50) Applicant has one younger sibling and six older siblings who are citizens and residents of Iraq. His youngest brother was imprisoned during the Saddam regime for taking part in the failed uprising. (Tr. 56, 70)

Applicant oldest brother owns a truck and his wife is a homemaker. (Tr. 59) Another brother is missing from the 1980 Iraq/Iran war. (Tr. 61) It was reported that his brother refused to go to war and was killed by Iraqi forces. (Tr. 61) Another brother is a retired clerk for a construction company run by the government. (Tr. 62) He has a brother who is an unemployed truck driver and another who is a welder. (Tr. 67, 69) His two sisters are homemakers. Applicant's youngest brother was given a government job as a form of compensation for his imprisonment during the Saddam regime. (Tr. 70) Applicant talks with his siblings weekly. (Tr. 73)

His nephews are a teacher, taxi driver, students, truck driver, security guard, policemen, and auto parts store employee. (Tr. 60, 63-67) One nephew is presumed deceased having been "taken by Saddam," meaning he disappeared during the Saddam regime. (Tr. 65)

In 2002 or 2003, Applicant, at the encouragement of the U.S. government, became a member of the Iraqi National Congress in Washington, D.C. The Iraqi National Congress also had an office in London. He was contacted by the U.S. Government and asked if he was willing to assist in the change of regime in Iraq. (Tr. 20) Applicant joined the Free Iraqi Forces to free Iraq and make it a better country. Applicant received training from the U.S. State Department and the U.S. Army in Texas and Hungary. (Tr. 30)

In February 2003, Applicant graduated from the Free Iraqi Forces Training and having successfully completed all requirements of the Task Force Warrior Officer Candidate School, was promoted to first lieutenant. (Exs. A, B) The certification of promotion and was signed by a U.S. Army major general who was the Task Force Warrior Commander. (Ex. C) In February 2003, Applicant moved to Kuwait and started

training U.S. military personnel about Iraqi culture, language, and religion until March 2003 when the war started.

As the U.S. military moved into Iraq, Applicant was part of a U.S. Army civil affairs unit. (Tr. 31) In May 2003, Applicant finished his job with the Free Iraqi Forces, returned to the U.S., and applied for a job as a translator. In August 2003, Applicant finished his training as a translator and returned to Iraq to commence work with the U.S. military units in Iraq. He and the U.S. forces he was with came under hostile fire and road side bombs during their missions, which included missions in Fallujah. (Tr. 84) He worked as a translator until November 2003, when, on a trip to the market, he was shot and injured. (Tr. 20) He was immediately taken to a hospital before being transported to Germany and then transferred to Walter Reed in Washington, D.C. (Tr. 36, 37)

From March 2004 to June 2004, Applicant returned to his job as translator in Iraq. He returned to the U.S. to buy a house and in August 2004, was ready to return to Iraq. At that time, he was asked to complete a new security application. His application was rejected because he had siblings in Iraq. Applicant is anxious to return to Iraq to again work with the U.S. military. (Tr. 86)

Applicant owned a home in the U.S. with a fair market value of \$147,000. (Tr. 44) He has \$4,000 in a 401 (k) retirement plan with his job. (Tr. 45) His bank accounts are located in the U.S. He owns no property outside of the U.S.

## **Iraq**

I take administrative notice of the following facts. Iraq is a constitutional, parliamentary democracy with a federal system of government. (Hex I) It is a republic with a freely elected government led by a Prime Minister. (Hex I) The 2005 Iraqi Constitution guarantees all Iraqis basic rights in many areas. Iraq's legislative branch consists of an elected Council of Representatives. Iraq's judicial branch is independent, and is under no authority but that of the law. The focus of the United States policy in Iraq remains on helping the Iraqi people build a constitutional, representative government that respects the rights of all Iraqis and has security forces capable of maintaining order and preventing the country from become a safe haven for terrorists and foreign fighters. The ultimate goal is an Iraq that is peaceful, united, stable, and democratic, with institutions capable of providing just governance and security for all Iraqis. Iraq and the United States are allies in the war against terrorism.

The risk of terrorism directed against U.S. citizens and interests in Iraq remains extremely high. (Hex III) The Department of State continues to strongly warn U.S. citizens against travel to Iraq, which remains very dangerous. (Hex V) There is credible information that terrorists are targeting civil aviation. All vehicular travel in Iraq is extremely dangerous. The government was only recently able to diminish violent attacks, using extensive implementation of better security measures. (Hex V)

## Policies

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense 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 access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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**

### **Foreign Influence**

AG ¶ 6 expresses the security concerns regarding foreign influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

Applicant's seven siblings are citizens and residents of Iraq. Applicant left Iraq fleeing the Hussein regime by going to a POW camp in Saudi Arabia. In 1992, he came to the U.S. as a refugee. In 1998, he became a naturalized U.S. citizen. He has been deployed to Iraq twice, working with the U.S. military forces. His deployment was interrupted when he was shot and had to be medically returned to the U.S. Once healed, he returned to Iraq to complete his deployment.

Having considered all of the Foreign Influence disqualifying conditions, applicable conditions that could possibly raise a security concern are AG ¶ 7(a) "contact 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 sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information" apply.

The new Iraqi government relies upon the U.S. for support as it moves forward with its new form of government. While Iraq's human rights record under Saddam Hussein was very dismal and some problems continue, its human rights record is slowly improving under the new government.

In every case where a sibling lives overseas, there is a risk of pressure on this relative and through them upon the holder of a security clearance. Under the facts of this case, a heightened risk for exploitation, inducement, manipulation pressure, or coercion is substantiated. However, Applicant has significant ties to the U.S. and few ties to Iraq. While he still has seven siblings living in Iraq, he lives with his native born wife in the U.S. His two children were born in the U.S. He has no financial or property

interests in Iraq. He owns a home in the U.S. and his ties with the U.S. are much stronger than his ties with Iraq.

Applicant's work as an interpreter supported the U.S. military mission in Iraq. He worked long hours in austere conditions with an ever present risk of hostile fire and road side bombs. The Army holds his work in a combat zone high regard. He provided more than language interpretation skills. He explained local cultural nuances and practices which greatly assisted the military in accomplishing its combat mission. During his time in Iraq, he worked very hard to help the Army and developed a high level of trust with the Army.

Applicant has partially mitigated the concern related to family members in Iraq under 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 U.S." he has fully mitigated concerns under 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."

None of Applicant siblings work for a foreign government and none are involved with organizations which seek to harm the U.S. Some of his nephews are policemen and security guards. Applicant talks with his siblings, but has limited contact with his nieces and nephews.

Applicant has no love for the former Iraqi regime, which killed one of his brothers, a nephew, and another imprisoned his brother. He and his brother responded to the U.S. call to rise up against the former dictator of Iraq. When that uprising failed, he would have been executed if caught. When he left Iraq, he lost his Iraqi citizenship. Applicant again responded to the U.S. call to the change of regime in Iraq. He became a member of the Iraqi National Congress in Washington, D.C. and joined the Free Iraqi Forces to free Iraq and make it a better country. Applicant was trained by the U.S. State Department and the U.S. Army. Having completed all requirements of the Task Force Warrior Officer Candidate School, he was promoted to first lieutenant and started training U.S. military personnel about Iraqi culture, language, and religion.

He was shot while in Iraq attached as a translator with the U.S. Army. There is little likelihood that Applicant will be placed in a position of having to choose between the interests of the U.S. and a foreign entity. Likewise, because of his close ties and his loyalties to the U.S., including his wife and two children (all U.S. born citizens), he would resolve any conflict of interest in favor of the U.S.

## Whole Person Concept

Protection of our national security is of paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the adjudicative process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. In reaching this decision, I have considered the whole person concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I considered the totality of Applicant's family ties to Iraq and the heavy burden an Applicant carries when he has family members in a foreign country.

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 the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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.

In the more than 17 years since he left Iraq, Applicant returned three times, each time working closely with the U.S. military. First as a lieutenant in the U.S. backed Free Iraqi Forces, then as a translator, and the third time when he returned to Iraq as a translator following his recovery from his shooting. Because he guided the Army personal on local customs and nuances related to the spoken word and responded very well in highly dangerous situations, the Army views him as a valuable resource in helping it achieve its mission in Iraq.<sup>2</sup>

While danger certainly exists for all who go to Iraq, Applicant and his siblings are in no greater danger than any other individual living and working in Iraq. The U.S. and Iraq governments have developed a close and positive working relationship. Iraq

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<sup>2</sup>In ISCR Case No. 05-03846 at 6 (App. Bd. Nov.14, 2006), the Appeal Board recognized an exception to the general rule in Guideline B cases when "an applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurs in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the national security . . . [and therefore he] can be relied upon to recognize, resist and report a foreign power's attempts at coercion or exploitation."



depends upon the U.S. to help in its fight to combat the developing insurgency and terrorist forces. The Iraq government is moving forward with democracy and developing a rule of law, with the assistance of the U.S.

Applicant has no love for the former brutal regime. The Hussein regime killed his brother and nephew, imprisoned his brother, and he was able to escape the country only by surrendering to the U.S. military and going to a POW camp. When he left Iraq, he was no longer an Iraqi citizen. Frequently, Applicant has gone in harms way to assist the U.S. Army in performing their duties in Iraq. He did this not once, but three times. The only reason he is not there now is because he lost his clearance because of his siblings living in Iraq.

I have carefully weighed the evidence in favor of Applicant against the government's concerns about Applicant's ability to protect classified information. I find that there is little potential for Applicant to be pressured, coerced, or exploited because he has siblings living in Iraq. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant 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:                   FOR APPLICANT

Subparagraph 1.a – 1.b:                   For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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CLAUDE R. HEINY II  
Administrative Judge