

KEYWORD: Foreign Influence

DIGEST: Applicant is a 37-year-old former refugee from Iraq, working as a contract translator in support of U.S. forces in Iraq. His mother and six of his nine siblings are citizens and residents of Iraq, whom he has not informed of his presence or work in Iraq in an effort to look out for his and their safety. Their ignorance of his work does not lessen the security risks raised by their presence in an area of active anti-U.S. forces should those forces identify the relationship. Applicant did not meet his burden to overcome foreign influence security concerns. Clearance is denied.

CASENO: 06-05228.h1

DATE: 05/21/2007

DATE: May 21, 2007

In re:

SSN: -----

Applicant for Security Clearance

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) ISCR Case No. 06-05228
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**DECISION OF ADMINISTRATIVE JUDGE
DAVID M. WHITE**

APPEARANCES

FOR GOVERNMENT

Francisco Mendez, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 37-year-old former refugee from Iraq, working as a contract translator in support of U.S. forces in Iraq. His mother and six of his nine siblings are citizens and residents of Iraq, whom he has not informed of his presence or work in Iraq in an effort to look out for his and their safety. Their ignorance of his work does not lessen the security risks raised by their presence in an area of active anti-U.S. forces should those forces identify the relationship. Applicant did not meet his burden to overcome foreign influence security concerns. Clearance is denied.

STATEMENT OF THE CASE

Applicant applied for a security clearance on May 3, 2005, in conjunction with his employment by a defense contractor. On June 14, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended. The SOR detailed reasons, under Guideline B (Foreign Influence), why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance for Applicant, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant responded to the SOR allegations in a notarized letter dated July 10, 2006, admitting the truth of all of the factual allegations but denying that any of them made him vulnerable to coercion, exploitation or pressure, and elected to have his case decided on the written record in lieu of a hearing.¹ Department Counsel submitted the government's written case on January 18, 2007. A complete copy of the file of relevant material (FORM)² was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant responded to the FORM on February 23, 2007, providing additional explanation about his situation and a copy of a letter of recommendation, from a military intelligence staff sergeant, dated November 1, 2005. The case was assigned to me on March 22, 2007.

FINDINGS OF FACT

Applicant admitted the truth of every factual allegation set forth in the SOR pertaining to foreign influence under Guideline B (subparagraphs 1.a through 1.e), but denied that any of them made him vulnerable to coercion, exploitation or pressure. Those admissions are incorporated herein as findings of fact. After complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 37-year-old employee of a defense contractor, hired to work as a translator

¹Item 3 (Applicant's letter response (AR) to SOR dated Jul. 10, 2006).

²The government submitted seven items in support of the allegations, and seven source documents in support of a request to take administrative notice of material facts concerning Iraq.

with U.S. forces in Iraq, who is seeking to obtain a security clearance for the first time.³ He was born and educated in Iraq, lived as a refugee in Jordan from 1995 until he immigrated in 1998, and became a naturalized citizen of the United States in 2004.⁴ Applicant reported on his SF-86 and his Counterintelligence Screening Questionnaire (CISQ), and admitted in response to the SOR, that his mother, one brother, three sisters, one half-brother and half-sister are citizens and residents of Iraq; that his other brother is an Iraqi citizen living in the United States; and that his other sister and other half-brother are naturalized U.S. citizens and residents.⁵ Applicant also reported and admitted that his roommate in the U.S., at the time he was hired to work in Iraq, was an Iraqi citizen.⁶ Applicant worked as a crew leader for a public relations/advertising company for the seven years preceding his current employment. He visited his family in Iraq from February to April 2005, and obtained his current job in May 2005.⁷

While living in the U.S., Applicant reported contact with his family members in Iraq twice per month, and with family members in the U.S. four times per month.⁸ None of Applicant's family members has any employment or other official connection with the government of Iraq.⁹ Since he was hired to work with U.S. forces as a translator in Iraq, he says he has severed all contact with his family in Iraq, and requested that his relatives in the U.S. not tell his family in Iraq that he is there. He says he does this for his safety and that of his family. In his response to the SOR, he explained:

I deny that I am vulnerable to coercion, exploitation or pressure due to these [Iraq-resident] family contacts. They do not know that I am working in Iraq as linguist. I didn't tell them because I am looking out for their safety, my safety and the countries [sic] safety. I always warn my brothers and my sister back in the states [sic] not to say anything about my current job to my family in Iraq. . . . I have not contacted my family members in Iraq since I've been working here. . . . my brother in the United States knows that I am working in Iraq, but does not know what I do. . . . I told my brothers and my sister in United States that if any one asked about me, even my mother, my brother or my sisters in Iraq, just tell them that I am very busy and have no time to call any one. . . . My former roommate does know that I am in Iraq, but does not know what I do here. . . . My family in Iraq is not vulnerable to coercion, exploitation or pressure, due to my living and working arrangement because they do

³Item 4 (Security Clearance Application (SF-86), dated May 3, 2005) at 1, 9. (Note: Item 4 was dated "03-05-05" by Applicant. Department Counsel stated that the application was signed on March 5, 2005 in section III of the FORM. However, it is apparent from the remaining documents, and the facts that he was visiting family in Iraq during the entire month of March and started employment in May, that he signed the application on May 3, 2005.)

⁴*Id.* at 1, 2; Item 6 (Counterintelligence (CI) Screening Questionnaire dated May 9, 2005) at 1, 10.

⁵Item 4 (SF-86) at 4-6, 11-20; Item 6 (CISQ) at 10-11; Item 3 (AR to SOR) at 1.

⁶Item 4 at 6; Item 3 at 1-2.

⁷Item 4 at 7; Item 6 at 11.

⁸Item 6 at 10-11.

⁹*Id.*; Item 3 at 1.

not know I am here.¹⁰

In his February 23, 2007, response to the FORM, Applicant restated that he had not had any communication with his family at all since he began his employment there.

Applicant has been working in Iraq since May 2005. In his FORM response, he states that he has “been working along side many other US Citizens as well as military personnel. These individuals have found me to be very trusting and have placed a great deal of confidence in me.” A military intelligence staff sergeant with whom he worked wrote him a letter of recommendation in November 2005, describing him as an extremely talented team player, with vast knowledge, exceptional communication skills, dedication and a positive “can-do” attitude. The senior investigator who conducted Applicant’s counterintelligence screening in May 2005 stated that no evidence indicated Applicant was a potential security risk, and that he did not appear to present a CI/FP risk.¹¹

Department Counsel sought administrative notice of the material facts concerning Iraq set forth in part IV of the FORM, and provided seven official U.S. Government source documents supporting the truth of those facts.¹² Applicant made no objection, and I did take administrative notice of those facts in reaching my decision in this case. Among the most pertinent of these facts are that Iraq’s newly and freely elected government has been unable to quell violence that has engulfed parts of Iraq, fueled and perpetrated by Al Qaeda terrorists, Sunni insurgents and Shiite militias and death squads. Numerous attacks and kidnappings by these groups have targeted contractors and other non-combatants, and various human rights abuses have been substantiated. Anti-western terrorist activity in Iraq is a continuing threat to Americans, and others.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into disqualifying conditions (DC) that may raise security concerns, and mitigating conditions (MC) that may reduce or negate security concerns. Applicable DCs and MCs must be considered in deciding whether to grant, continue, deny or revoke an individual's eligibility for access to classified information.

An administrative judge need not view the adjudicative guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are intended to be applied in conjunction with the factors set forth in the Adjudicative Process provision of the Directive (Enclosure 2, Section E2.2), to assist the administrative judge in reaching fair and impartial, common sense decisions.

The entire decision-making process is a conscientious scrutiny of a number of variables known as the "whole person concept." All available, reliable information about the person, past and

¹⁰Item 3 at 1-2.

¹¹Item 7 at 1.

¹²Items 8 through 14.

present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an administrative judge should consider, in addition to the applicable guidelines, are: (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 voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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.

Protection of the national security is the paramount consideration, so the final decision in each case must be arrived at by applying the standard that issuance of a clearance must be clearly consistent with the interests of national security. Any doubt as to whether access to classified information is clearly consistent with national security must be resolved in favor of the national security.¹³ 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.

In the decision-making process, facts must be established by “substantial evidence.”¹⁴ The burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. “Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted.”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, and [Applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”¹⁶ Once it has met its initial burden of production, the burden of persuasion (including any burden to disprove a mitigating condition) never shifts to the government.¹⁷

A person who seeks access to classified information seeks to enter a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the government must be able to repose a high degree of trust and confidence in those individuals

¹³Directive ¶¶ E2.2.2, E2.2.3.

¹⁴“Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “Substantial evidence” is “more than a scintilla but less than a preponderance.” *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

¹⁵Directive ¶ E3.1.14.

¹⁶Directive ¶ E3.1.15.

¹⁷ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005); “The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant’s past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

to whom it grants access to classified information.

Decisions under this Directive include, by necessity, consideration of the possible risk an 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 specifically provides that any adverse industrial security clearance decision shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied judgment as to Applicant's loyalty or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

Guideline B (Foreign Influence)

"A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure."¹⁸

Seven of Applicant's ten immediate family members are both citizens and residents of Iraq, and an eighth is an Iraqi citizen residing in the U.S. These circumstances could raise security concerns under foreign influence disqualifying condition (FI DC) E2.A2.1.2.1 ("An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country"). The risk of coercion, exploitation or pressure from the government of Iraq itself may be insignificant, since Applicant and the U.S. forces to whom he provides support are in Iraq in alliance with, and to further the interests of that government. Accordingly, the Iraqi citizenship, in and of itself, of his brother who resides in the U.S. does not raise any security concerns under this (or any) FI DC. However, there are many violent, warring, organized groups operating contrary to the interests of U.S. forces in Iraq that present a heightened risk to act against Applicant's family members in Iraq if his activities and their relationship becomes known. Applicant recognizes and addresses this risk through his decision to have no contact with his family in Iraq, and his attempts to prevent them from knowing where he is and what he is doing. The issue is whether Applicant's family are in a position to be exploited by anti-U.S. forces in Iraq in a way that could force Applicant to choose between loyalty to them and loyalty to the United States,¹⁹ not whether the family members realize such risk exists. Accordingly, Applicant's close family members in Iraq raise security concerns under FI DC E2.A2.1.2.1.

¹⁸Directive ¶ E2.A2.1.1.

¹⁹See ISCR Case No. 05-03250 at 4 (App. Bd. Apr 6, 2007).

Applicant no longer lives with his former roommate, who remains in the U.S., so no security concerns are raised under FI DC E2.A2.1.2.2 (“Sharing living quarters with a person or persons, regardless of citizenship status, if the potential for adverse foreign influence or duress exists”). Department Counsel did not assert that any other FI DC applied, nor are any supported by the evidence.

Applicant essentially asserted that foreign influence mitigating condition (FI MC) E2.A2.1.3.1 (“A determination that the immediate family member(s) . . . in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States”) applies to his circumstances. However, this FI MC requires Applicant to prove both that his family members are not agents of a foreign power, which he has done, and that his family members are not in a position to be exploited by a foreign power in a way that could force him to choose between loyalty to family or country. His assertion that this second condition applies because he did not tell them he is in Iraq is not persuasive. Deceiving his family members in no way reduces their vulnerability to exploitation by anti-U.S. forces active in Iraq, who may be expected to actively seek to identify Applicant as an Iraqi with close family in the country. As noted, Applicant himself identifies this danger as his reason for deceiving his mother and siblings.

Applicant’s assertion that he has not had contact with his family members in Iraq since he began working there in 2005 is also insufficient to mitigate security concerns by application of FI MC E2.A2.1.3.3 (“Contact and correspondence with foreign citizens are casual and infrequent”). Applicant has regular contact with Iraqi citizens in his daily work as a translator for U.S. forces. His non-contact with his family, with whom he previously had frequent contact, was motivated by his ongoing and natural concern for the threat to their well-being arising from his work on behalf of U.S. forces in Iraq. This is not an indication that his susceptibility to pressure, coercion or duress through threats or harm to his family is reduced, but in fact shows the opposite.

There is no evidence in the record that would support the application of any other FI MC. I have reviewed each potential FI MC and conclude that none apply.

Whole Person Analysis

Applicant’s mother and six of his nine siblings are both citizens and residents of Iraq. He cares for them and their welfare. He even cut off his previously frequent contact with them, to prevent their knowing of his work on behalf of U.S. forces in Iraq because of the danger to which this work exposes them. The security concern is not whether his family knows what he is doing, but the risk to them, and through them to Applicant, if anti-U.S. factions find out that he has family in Iraq who are in a position to be exploited. Applicant left Iraq as a refugee persecuted by the former regime, and became a U.S. citizen who has risked his personal safety by serving with U.S. forces as a contract translator in Iraq since May 2005. His work in this regard has been excellent. However, on balance, he has not met his burden to show that security concerns raised by the presence of his close family members in an area of active and violent anti-U.S. hostilities is mitigated, or that the potential for pressure, coercion, exploitation, or duress is lessened simply because he deceived those family members about his activities. This deception, in fact, demonstrates that Applicant recognizes this danger to his family, and his real risk of having to choose between their interests and those of the United States should hostile forces identify them. The risk is a continuing one, inherent in the ongoing family relationship and the nature of the conflict in Iraq.

As noted above, any doubt as to whether access to classified information is clearly consistent with national security must be resolved in favor of the national security. For the reasons stated, I conclude Applicant has not demonstrated that it is clearly consistent with the interests of national security to grant him access to classified information.

FORMAL FINDINGS

Formal Findings For or Against Applicant on the allegations set forth in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	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 is denied.

David M. White
Administrative Judge