

KEYWORD: Foreign Influence

DIGEST: Applicant is a 50-year-old linguist, born in Iraq, granted asylum by the U.S., and naturalized as a U.S. citizen. His mother and siblings are citizens and residents of Iraq, residing in an area controlled by the Kurdistan Regional Government. Applicant's identity is protected and his family contacts are controlled and monitored. The security concern based on foreign influence is mitigated. Clearance is granted.

CASENO: 06-09641.h1

DATE: 04/11/2007

DATE: April 11, 2007

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In re:)	
)	
-----)	ISCR Case No. 06-09641
SSN: -----)	
)	
Applicant for Security Clearance)	
_____)	

**DECISION OF ADMINISTRATIVE JUDGE
LEROY F. FOREMAN**

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is a 50-year-old linguist, born in Iraq, granted asylum by the U.S., and naturalized as a U.S. citizen. His mother and siblings are citizens and residents of Iraq, residing in an area

controlled by the Kurdistan Regional Government. Applicant's identity is protected and his family contacts are controlled and monitored. The security concern based on foreign influence is mitigated. Clearance is granted.

STATEMENT OF THE CASE

On August 21, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny Applicant a security clearance. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive). The SOR alleged security concerns raised under Guideline B (Foreign Influence) of the Directive.

Applicant answered the SOR in writing on September 22, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on January 10, 2007, and heard on March 14, 2007, as scheduled. DOHA received the hearing transcript (Tr.) on March 23, 2007.

FINDINGS OF FACT

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I make the following findings:

Applicant is a 50-year-old linguist employed by a federal contractor supporting the U.S. Army in Iraq (Tr. 6). He was born in Iraq, graduated from college in Iraq in 1982 with a degree in public health, and served as an enlisted soldier in the Iraqi Army from July 1983 to April 1984 (Tr. 31; Government Exhibit (GX) 1 at 27; GX 3 at 1). In 1991, he began working for a non-governmental agency to rebuild villages in Kurdistan that had been destroyed by the Iraqi government. His agency received financial support from the U.S. (Tr. 32). He was evacuated from by the U.S. Army when he was targeted by Iraqi intelligence because of his relationship with the U.S. He, his brother, and his brother's family were evacuated across the border into Turkey in December 1996, and then moved to Guam and granted asylum. Applicant was in Guam for about three months and came to the U.S. in March 1997 (Government Exhibit 2 at 1). The Kurdish authorities would not permit Applicant's mother and other siblings to leave because they were not targeted by Iraqi intelligence (Tr. 34).

Applicant was naturalized as a U.S. citizen in October 2005. He has never held a final security clearance, but he held an interim clearance from November 2005 until July 2006, when the preliminary decision underlying the SOR was made (Tr. 7; AX B at 1).

Before Applicant was selected for duty as a linguist, he was interviewed and underwent counterintelligence screening. Only about 40 percent of linguist candidates successfully pass the screening (AX B at 1).

Applicant's military supervisor considered him hard-working and dedicated, often volunteering for difficult and dangerous assignments that other linguists did not want (Applicant's Exhibit (AX) A). He was especially valuable because he spoke the local dialect in the area where he was assigned. In Iraq, a word or phrase has different meanings depending on dialect and gestures of the speaker (AX B at 1). In May 2006, Applicant received a certificate of appreciation from his unit (AX C). His facility security officer rates his performance as excellent (AX B at 2).

The Army takes special precautions to protect Iraqi-born linguists and their families. Applicant works under a fictitious name. He lives with the military unit he supports, and he is restricted from traveling outside his duty area, which is a considerable distance from his family. (AX B at 2).

Applicant's 82-year-old mother, three brothers, and two sisters are citizens and residents of Iraq (GX 2 at 2). His mother and two sisters do not work outside the home, and they have no government connections. Two of his three brothers served as enlisted soldiers in the Iraqi Army. All three brothers work for construction companies in Iraq.

Applicant had no contact with his family members in Iraq from 1997 to 2003 (Tr. 35). He visited his mother, one brother, and one sister in November 2006 (Tr. 36). The visit was prompted by his mother's request that he visit her before she died (Tr. 36). He has telephonic contact with his mother and older sister about once a month, contacts about once a year with a third brother and his younger sister, and no contact with two of his brothers (Tr. 34-35; GX 2 at 2).

Applicant's family members live in northern Iraq, in an area controlled by the Kurdistan Regional Government, about 300 miles away from the more hostile areas of central Iraq and Baghdad. This area and Applicant's family are very pro-American and supportive of U.S. efforts in Iraq (Answer to SOR; AX B at 2).

Applicant told his mother he was working for the U.S. Army but did not tell her what he does. His mother, an uneducated woman, told him to "do good job for America." His other family members do not know he is working with the U.S. Army (Tr. 37).

After a U.S.-led military coalition removed Saddam Hussein from power in 2003, Iraq has evolved into a constitutional democracy with a federal system of government. An elected government took office in March 2006. However, the Iraqi government has been unable to quell violence by terrorists, insurgents, and sectarian militias. U.S. contractors, humanitarian workers, and other non-combatants have been targeted, kidnaped, and murdered. The Iraqi government has had difficulty controlling its own security forces, leading to numerous human rights abuses.¹

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within*

¹At Department Counsel's request, I took administrative notice of the adjudicative facts regarding Iraq. Department Counsel's request, and the seven attachments substantiating the adjudicative facts to be noticed, are included in the record as Hearing Exhibit I.

Industry § 2 (Feb. 20, 1960), as amended and modified. Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

The Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶¶ 6.3.1 through 6.3.6.

A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in persons with access to classified information. However, the decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. “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). “[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant’s security suitability.” ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3; *see* Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

Guideline B (Foreign Influence)

The concern under Guideline B is that a security risk may exist when an applicant’s immediate family, or other persons to whom he or she may be bound by affection, influence, or obligation, are not citizens of the U.S. or may be subject to duress. “These situations could create the potential for foreign influence that could result in the compromise of classified information.” Directive ¶ E2.A2.1.1. A disqualifying condition (DC 1) may arise when “[a]n immediate family member [spouse, father, mother, sons, daughters, brothers, sisters], 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.” Directive ¶ E2.A2.1.2.1. DC 1 is raised by the presence of Applicant’s mother and siblings in Iraq.

Family ties with persons in a foreign country are not, as a matter of law, automatically disqualifying under this guideline. However, such ties raise a prima facie security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for the applicant. *See* Directive ¶ E3.1.15; ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 (App. Bd. Feb. 8, 2001).

Since the government produced substantial evidence to establish DC 1, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it is never shifted to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

In cases where an applicant has immediate family members who are citizens or residents of a foreign country, a mitigating condition (MC 1) may apply if the family members “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.” Directive ¶ E2.A2.1.3.1.

Notwithstanding the facially disjunctive language of MC 1 (“agents of a foreign power **or** in a position to be exploited”), it requires proof “that an applicant’s family members, cohabitant, or associates in question are (a) not agents of a foreign power, **and** (b) not in a position to be exploited by a foreign power in a way that could force the applicant to chose between the person(s) involved and the United States.” ISCR Case No. 02-14995 at 5 (App. Bd. Jul. 26, 2004). The totality of an applicant’s family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003).

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).

Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. *See* ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Nevertheless, the nature of a nation’s government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S.

While the Iraqi government is not in complete control, it is allied closely with the U.S. Only Applicant’s mother knows he is associated with the U.S. Army, and even she does not know what he does. She is an elderly, uneducated widow, unlikely to call attention to herself. She is pro-

American and resides in a relatively secure, strongly pro-American region of Iraq. Applicant's siblings are unaware of his involvement with the U.S. Army. Applicant's identity is protected, and his freedom of movement and familial contacts are monitored and restricted.

While Applicant is vulnerable to local violence to the same extent as the U.S. military members, the likelihood of his true identity being revealed and connected to his family in Iraq is extremely remote. Absent such a connection, the likelihood of his family being exploited by anti-U.S. agents, terrorists, or extremists is remote. I conclude MC 1 is established.

A mitigating condition (MC 3) may apply if "[c]ontact and correspondence with foreign citizens are casual and infrequent." Directive ¶ E2.A2.1.3.3. There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002). MC 3 is established for Applicant's two brothers with whom he has no contact, but it is not established for his mother and his other siblings in Iraq.

Whole Person Analysis

In addition to considering the specific disqualifying and mitigating conditions under each guideline, I have also considered: (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 applicant'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. Directive ¶¶ E2.2.1.1 through E2.2.1.9. Some of these factors were incorporated in the discussion above, but some merit additional comment.

Applicant is a mature man who has experienced the threat of death for his political beliefs. He literally owes his life to the U.S. Government. He has voluntarily subjected himself to further danger to support the U.S. forces. During their last visit, his mother admonished him to do a good job for the Americans. To yield to pressure or coercion would not only betray his affection for the U.S. and those who rescued him from death, it also would betray his mother's hopes.

Under the revised adjudicative guidelines implemented by the Department of Defense for cases where the SOR was issued on or after September 1, 2006 (Guidelines), a mitigating condition may be established by showing "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." Guidelines ¶ 8(b). While Applicant's case is not covered by the revised guidelines, the strength and depth of Applicant's devotion to the U.S. is a relevant consideration under the whole-person concept.

After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concern based on foreign influence. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him a security clearance.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B (Foreign Influence): FOR APPLICANT

Subparagraph 1.a: For Applicant

DECISION

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Clearance is granted.

LeRoy F. Foreman
Administrative Judge