



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



In the matter of:)
)
) ISCR Case No. 12-05669
)
Applicant for Security Clearance)

Appearances

For Government: Christopher Morin, Esq., Department Counsel
For Applicant: Dan R. Alexander, Esq.

01/17/2014

Decision

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns arising under Guidelines E (personal conduct) and B (foreign influence). Eligibility for access to classified information is granted.

Statement of the Case

On July 31, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines E and B. This action was taken under Executive Order (EO) 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 adjudicative guidelines (AG) implemented on September 1, 2006.

On August 23, 2013, Applicant answered the SOR and requested a hearing. The case was assigned to me on October 11, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 28, 2013, and the hearing was convened as scheduled on November 21, 2013. At that hearing, Department Counsel offered Government's Exhibits (GE) 1 through 3 that were admitted into evidence

without objection. Department Counsel also submitted a request for administrative notice of facts concerning Iraq that was marked as Hearing Exhibit (HE) I. Applicant had no objection to the administrative notice request, which was granted. Applicant testified, called his wife as a witness, and offered Applicant's Exhibits (AE) A through F that were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on December 3, 2013.

Findings of Fact

Applicant is 63 years old. He has worked for federal contractors in Iraq and is seeking to continue that employment. He is married and has three children, twins who are 36 years old and another child who is 37 years old. This is the first time that he has sought to obtain a security clearance.¹

The SOR set forth two Guideline E allegations. The first allegation asserted that Applicant was terminated from a job in August 2008 after a regional security officer informed his employer that Applicant's embassy badge and access had been revoked, and the other allegation asserted that Applicant falsified his Electronic Questionnaire for Investigations Processing (e-QIP) dated September 12, 2010, by concealing that termination of employment. Under Guideline B, the SOR alleged that Applicant's mother, six sisters, mother-in-law, two brothers-in-law, and a nephew were citizens and residents of Iraq and that he had a brother that was a citizen of Iraq and resident of the United States. In his answer to the SOR, Applicant denied the Guideline E allegations and admitted the Guideline B allegations. His admissions are incorporated as findings of fact.²

Guideline B

Applicant and his wife were born in Iraq. He was a family doctor there. They came to the United States as refugees in 1977 and became U.S. citizens in 1985. They are of Kurdish descent. Their oldest son was born in Iran and is now a U.S. citizen. Their twins were born in the United States. They have three grandchildren who are U.S. citizens.³

Applicant's mother is 84 years old and in poor health. She is a resident and citizen of Iraq and does not work outside the home. He talks to her monthly on the telephone. Applicant traveled to Iraq to visit his mother from April to June 2009 and from October 2012 to February 2013. He does not provide financial support to his mother. His father is deceased and was a pastor.⁴

¹ Tr. 24-26, 47, 57-59, 105-107; GE 1. When he previously worked in Iraq, Applicant may have had a security clearance that was issued by the Department of State.

² SOR, Applicant Answer to the SOR.

³ Tr. 23-26, 71-73, 91-95; GE 1, 2.

⁴ Tr. 47-48, 64-71, 73-75, 100, 107-108; GE 1, 2.

Applicant has four sisters and two half-sisters who are citizens and residents of Iraq. He talks to his sisters on the telephone about once every three or four months and last saw them in 2012. None of them work outside the home. Each is married. His brothers-in-law do not work for the Iraqi government and have not served in the military. They work for private employers, primarily construction companies. Applicant has a brother who is a resident of the United States. He believes his brother is still a citizen of Iraq, but is not certain. Although his brother lives in a house owned by Applicant, they had a personal disagreement over financial issues and have not talked to each other since about 2003 or 2004.⁵

Applicant's mother-in-law is a citizen and resident of Iraq. She is elderly, blind, ill, and does not work outside the home. He last saw or spoke to her in 2012. Before then, he would talk to her on the telephone about once every six months. His father-in-law is deceased and was a farmer.⁶

Applicant's nephew is a citizen and resident of Iraq. He works as a butcher and has never worked for the Iraqi government or served in the military. He is married, and his wife does not work outside the home. Applicant stayed at his nephew's residence in Iraq for a week in 2012. He speaks to his nephew about ten to 15 times a year.⁷

Applicant and his wife neither own property in Iraq nor have any bank accounts there. They have three real estate holdings in the United States. These include their home valued between \$210,000 and \$300,000, another home valued at about \$117,000, and an investment property valued at about \$150,000. At the time of the hearing, Applicant had about \$5,000 in a checking account and about \$50,000 in a savings account. He also has about \$10,000 in a 401(k) account.⁸

Guideline E

Applicant worked for a federal contractor in Iraq from July 2004 to August 2008. While in Iraq, he shared a government vehicle with coworkers. On August 10, 2008, a coworker asked Applicant for the keys to the vehicle so that he could use it. Applicant advised the coworker that the vehicle had been turned into the repair shop for servicing. An argument ensued between the coworker and Applicant. During the argument, Applicant told the coworker that he was concerned about the coworker's drinking and driving and told him that he should not drink and drive. The coworker became upset and began swearing. The coworker pulled Applicant out of the office, threatened him, and indicated that he wanted to engage in a fight with him. Applicant stated that he tried to

⁵ Tr. 48, 80-84, 87-90; GE 1, 2.

⁶ Tr. 82-83, 100; GE 1, 2.

⁷ Tr. 75-80; GE 1, 2.

⁸ Tr. 69-71, 84-89, 96-97; GE 1, 2.

avoid the confrontation. Applicant and the coworker reported the argument to their supervisor.⁹

Applicant's company instituted an investigation of the incident. About two days after the argument, Applicant received an email from his supervisor that stated, due to company policy, employees involved in a verbal argument would be sent back to the United States. In an email, his supervisor also informed him that he handled the incident like a true professional. Applicant indicated that his supervisor also told him that, in about two weeks after being sent home, he would be allowed to return to Iraq. Applicant and the coworker were both sent back to the United States. Applicant stated that he was never informed that his job was at risk because of the incident. As Applicant was departing, a colleague informed him that he had to turn in his badge, but would receive another badge when he returned. Applicant's wife, who was also working for a federal contractor in Iraq at that time, returned to the United States with him.¹⁰

On August 26, 2008, Applicant's company issued a termination letter. The termination letter was addressed to Applicant's residence in the United States. The letter advised that the government security officer revoked Applicant's badge and access, which precluded him from continuing to work as a security escort. A "personnel action" dated August 26, 2008, also reflected that Applicant was terminated. On September 2, 2008, the personnel action was signed by Applicant's supervisor, senior executive manager, and human resources officer. There is a signature block on that document for the "employee;" however, that signature block was not signed by Applicant and is blank.¹¹

On August 20, 2010, Applicant received an email from his supervisor advising him and his wife that the supervisor received approval to bring them back to support a particular project. On September 2, 2010, Applicant returned to Iraq to work for the same company and supervisor. He worked there until about November 2, 2010, when he returned to the United States for a security clearance interview. Due to security clearance eligibility issues, he has not since returned to his job in Iraq.¹²

In his e-QIP dated September 12, 2010, Applicant responded "No" to the following question:

⁹ Tr. 26, 31-35, 42-43, 59-60; GE 2.

¹⁰ Tr. 28-31, 35-36, 60-62, 100-105; GE 2; Applicant Answer to the SOR.

¹¹ Tr. 26-31, 50, 62-64; GE 2, 3. Applicant's employer was affiliated with another company and correspondence concerning his termination of employment appears on both company's letterhead. See Tr. 28-30, 37-38; GE 3.

¹² Tr. 26-27, 36-42, 104-105; GE 1, 2; AE A. Applicant's employer was affiliated with another company and correspondence concerning his termination of employment appears on both company's letterhead. See Tr. 28-30, 37-38; GE 3.

Section 13C: Employment Record

Has any of the following happened to you in the last 7 years?

1. Fired from a job
2. Quit a job after being told you would be fired
3. Left a job by mutual agreement following charges or allegations of misconduct
4. Left a job by mutual agreement following notice of unsatisfactory performance
- 5 Laid off from job by employer¹³

At the hearing, Applicant credibly testified that he never received the termination letter. He stated that he was unaware of the termination letter until after he submitted his e-QIP. He stated that he was in Amman, Jordan on his way to the United States on the date that the letter was issued. Both he and his wife testified the termination letter was never delivered to their home in the United States. After returning home in August 2008, Applicant called his supervisor to discuss returning to Iraq and was informed his security clearance needed updating before he could return. Applicant waited to hear from his employer, but did not hear anything until about two years later.¹⁴

Character Evidence

Applicant received a certificate of appreciate from the U.S. Embassy in Baghdad for his outstanding support, contributions, and sacrifice during multiple indirect fire attacks against the Green Zone in 2008. He also received certificates of appreciation from senior U.S. military personnel for his help and support in Iraq.¹⁵

Applicant's wife testified that she has never known her husband to be untruthful. She currently works for a local governmental entity helping the needy and homeless as an eligibility counselor. She is very active in supporting the Kurdish community in her local area. She was described as a leader of that community and has been recognized in the media for her efforts in providing medical supplies to Kurds.¹⁶

Iraq

In 2003, a U.S.-led coalition removed Saddam Hussein and his Ba'ath party from power. While a new freely elected government took office in 2006, terrorists continue to

¹³ GE 1.

¹⁴ Tr. 26-31, 35-42, 49-57, 59-64, 100-107; GE 2; AE C.

¹⁵ Tr. 43-47, 95-98, 100-105; AE B.

¹⁶ Tr. 43-47, 95-98, 100-105; AE B.

endanger the security and stability of Iraq. Foreign terrorists continue to operate in the country and Al-Qaeda remains a threat there.

The State Department continues to warn U.S. citizens of the danger of traveling in Iraq and recommends against all but essential travel due to the dangerous security situation. Numerous insurgent groups remain active throughout Iraq, despite the efforts of the Iraq security forces. The State Department warns of attacks that include roadside improvised explosive devices (IEDs), mortars, rockets, human and vehicle borne IEDs, and shootings. There is also the threat of sectarian violence in the country. Kidnappings continue to occur and the targets are Iraqi citizens and foreigners, including dual U.S.-Iraqi citizens.

There are reports of human rights abuses, including arbitrary deprivation of life; disappearances; torture; and other cruel, inhuman or degrading treatment or punishment. The Iraqi government's effectiveness in adhering to the rule of law has been hampered by ongoing violence, corruption, sectarian unrest, and the lack of oversight, and accountability. The treatment of detainees under government authority has been generally poor. The judiciary is weak, and judicial independence is impaired by threats and killings by insurgent, sectarian, tribal, and criminal elements. Security threats hinder the ability of citizens to access the courts, and witness intimidation continues.¹⁷

Policies

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 that 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 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.

¹⁷ HE I.

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 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 about 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. A falsification must be intentional, and an omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission.¹⁸

In his SCA dated September 12, 2010, Applicant did not disclose that he had been terminated from a job in August 2008. At the hearing, he testified credibly that he was never informed that he was terminated from that job. In August 2008, he and a co-worker were sent back to the United States following an argument. At that time, Applicant was led to believe that he would be allowed to return to his job in Iraq after a short period. The termination letter and related personnel action were issued after he departed Iraq and were not signed by him. Both he and his wife testified that they never received the termination letter at their residence in the United States. After returning home, he contacted his supervisor about returning to Iraq and was informed that his security clearance paperwork needed updating. Two years later, he was recalled to his job in Iraq. Because he was still unaware of the termination letter when he subsequently submitted his e-QIP, he did not intentionally falsify his response to Section 13C when he indicated he had not been fired from a job in the past seven years. AG ¶ 16(a) is not applicable. Personal conduct security concerns are concluded for Applicant.

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern 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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. Two are potentially applicable here:

(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

¹⁸ See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

(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.

AG ¶ 7(a) requires substantial evidence of a “heightened risk.” The “heightened risk” required to raise this disqualifying condition is a relatively low standard. “Heightened risk” denotes a risk of greater than the normal risk inherent in having a family member or friend living under a foreign government or owning property in a foreign country. The totality of Applicant’s ties to a foreign country as well as each individual tie must be considered.

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.”¹⁹

Furthermore, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.”²⁰ Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation’s government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant’s foreign contacts are vulnerability to coercion from the government, terrorist organizations, or other groups.²¹

In this case, Applicant’s mother, four sisters, two half-sisters, mother-in-law, two brothers-in-law, and a nephew are citizens and residents of Iraq. Additionally, he has a brother who resides in the United States and may be an Iraqi citizen. Because Iraq has an unstable government that has committed human rights abuses and is fertile ground for terrorists attacks and activities, Applicant’s close family contacts in Iraq create a heightened risk of foreign inducement, manipulation, pressure, or coercion. Those relationships could also create a potential conflict of interest with his obligation to protect sensitive information. AG ¶¶ 7(a) and 7(b) apply.

AG ¶ 8 provides conditions that could mitigate foreign influence security concerns. The potentially applicable mitigating conditions are:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those

¹⁹ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

²⁰ ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

²¹ See *generally*, ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided.)

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.;

(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; and

(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.

Applicant continues to maintain a close relationship with his mother, sisters, half-sisters, and nephew. He communicates with them on a regular basis and occasionally visits them. His wife has a close relationship with her mother. Those contacts are not casual or infrequent. Given his close family contacts in Iraq and the security conditions there, Applicant could be placed in a position of having to choose between the interests of foreign family members and the interests of the United States. AG ¶ 8(a) and 8(c) do not apply.

Applicant and his wife came to United States over 36 years ago. They have been U.S. citizens for 28 years. His children and grandchildren are U.S. citizens. He owns three properties in the United States that have a total value of about \$500,000. He has no overseas financial interests. His wife works for a governmental entity in the United States and is actively involved in the local community. Applicant and his wife have made their home in the United States and have cultivated deep roots here. Considering his contacts and interests in the United States in comparison to those in Iraq, I find his sense of loyalty or obligation to his relatives in Iraq are far outweighed by his deep and longstanding relationships and loyalties in the United States. He can be expected to resolve any conflict of interest in favor of U.S. interests. I find AG ¶ 8(b) applies.

In cases of this nature, an additional analysis is necessary. The Appeal Board has stated:

As a general rule, an applicant's prior history of complying with security procedures and regulations is considered to be of relatively low probative value for the purposes of refuting, mitigating, or extenuating the security concerns raised by that applicant's more immediate disqualifying conduct or circumstances. However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the national security. The presence of such circumstances can give

credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report a foreign power's attempts at coercion or exploitation.²²

Applicant has received a certificate of appreciation from the U.S. Embassy in Baghdad for his contributions and sacrifices during multiple indirect fires on the Green Zone. While details of his compliance with security procedures in Iraq are lacking, his willingness to risk his life in support of U.S. interests warrants some credit under the quoted Appeal Board exception.

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(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.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guidelines E and B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant has been a U.S. citizen for over 28 years. He worked in Iraq in support of the U.S. military and State Department. Whatever potential conflicts that may arise from Applicant's relatives in Iraq are more than counterbalanced by his interests, responsibilities, and loyalties to the United States.

²² ISCR Cases No. 06-25928 at 4 (App. Bd. Apr. 9, 2008) (internal citations omitted). See also ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006) citing ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No. 02-10113 at 5 (App. Bd. Mar. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd. May, 30, 2006); ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006); ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006).

Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. Considering all the evidence, I conclude Applicant has mitigated the security concerns arising under the guidelines for personal conduct and foreign influence.

Formal Findings

Formal findings 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 E:	FOR APPLICANT
Subparagraphs 1.a – 1.b:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a – 2.f:	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 a security clearance. Eligibility for access to classified information is granted.

James F. Duffy
Administrative Judge