



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



In the matter of: )  
)  
) ISCR Case No. 12-08823  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Candace Garcia, Esq., Department Counsel  
For Applicant: *Pro se*

01/28/2016

**Decision**

CURRY, Marc E., Administrative Judge:

Applicant mitigated the foreign influence security concerns. Clearance is granted.

**Statement of the Case**

On May 2, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) detailing security concerns under Guideline B, Foreign Influence. The action was taken under 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 adjudicative guidelines (AG) effective within the DOD for SORs issued as of September 1, 2006.

Applicant answered the SOR on May 14, 2015. Although he did not explicitly admit or deny the allegations, he provided information that refuted subparagraphs 1.a and 1.d, and he elaborated on the information alleged in subparagraphs 1.b and 1.c. I

construe these responses as a denial of subparagraphs 1.a and 1.d, and an admission of subparagraphs 1.b and 1.c. I received the case on September 17, 2015. On September 23, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing for October 8, 2015. I held the hearing as scheduled. During the hearing, I received three Government exhibits (Government Exhibits (GE) I - GE 3), and 14 Applicant exhibits. (Applicant Exhibits (AE) A - AE N) I took administrative notice, at Department Counsel's request, of information about Iraq set forth in six documents generated by various U.S. government agencies. (Hearing Exhibits (HE) I-VI) DOHA received the hearing transcript (Tr.) on October 16, 2015.

At the close of the hearing, I left the record open to allow Applicant to submit additional evidence. Within the time allotted, he submitted 45 exhibits (AE O - AE GGG) Department Counsel had no objection to any of the exhibits except AE S. I sustained the objection, and I admitted the remainder of the post-hearing exhibits as AE O - AE R, and AE T through AE GGG.

### **Findings of Fact**

Applicant is a married man with children. He was born and raised in Iraq. After graduating from high school, he attended Iraq's army military college, graduating with the rank of second lieutenant. After the U.S. - led coalition removed Saddam Hussein from power and disbanded the Iraqi Army in 2003, Applicant joined the coalition's efforts at stabilizing the country and creating a civil society. Applicant agreed to help the United States because he agreed with the values it was promoting. (Tr. 83)

In 2004, there was a major uprising led by Saddam Hussein loyalists in the Iraqi Army. (AE E) Approximately 85 percent of the Iraqi Army deserted. However, Applicant, "stood stalwart" and was subsequently promoted. (AE E) Six months later he was promoted again.

Applicant's service was extraordinary. (AE Q, Attachment 8) He simultaneously "stamped out corruption in his unit" while assisting U.S. forces with executing counter-insurgent operations. (AE R; AE KK) He "led from the front, and led by example every day," earning "the confidence of colonels and . . . the ear of generals." (AE KK) U.S. officers "completely put their lives in his hands, trusting him enough to ride alone through the streets . . ." (AE JJ) His unit held fast [after] multiple attacks during a particularly volatile period in 2004. (AE KK) He often led his soldiers on anti-insurgent missions without seeking help from the U.S. Army. (AE LL) His unit helped guard polling stations during the first Iraqi elections. (AE GGG)

Applicant's life and the lives of his family members were in constant danger. Al-Queda placed a bounty on his life. (Tr. 41) He survived multiple assassination attempts. (GE 3 at 4) Between 2004 and 2006, terrorists during different episodes attacked his home, his family, and kidnapped immediate family members. According to a U.S. Army veteran and Purple Heart Recipient who served two tours of duty in Iraq, "the personal

threat to [Applicant's] life and safety never diminished his commitment to the common American and Iraqi goal of building a safer, more stable Iraq." (AE Q)

Applicant's father was seriously injured by a car bomb explosion. (Tr. 42) Later, terrorists killed an in-law. (Tr. 43) Shortly after that, terrorists kidnapped a relative, a child. (Tr. 43) They called Applicant and told him that they would kill this child if Applicant did not leave the Iraqi Army. Applicant responded, "no, I will stay and help the U.S. Army . . ." The terrorists then killed the child. (Tr. 43)

Terrorists killed Applicant's father and brutally assaulted his mother. (Tr. 42) As a result, the U.S. Government granted Applicant asylum, and moved him and his family to the United States. (Tr. 17)

Applicant was unable to find work for the first two years that he lived in the United States. He supported his family through a combination of savings and support from the U.S. military. (GE 2 at 2) In 2008, he obtained a job with a defense contractor as a cultural advisor, training assistant, and role player. (AE H) From 2012 to 2014, he worked in this capacity as a self-employed consultant. (AE A)

Applicant was highly respected on the job. According to a colonel who worked with Applicant in 2009, "he was the perfect mentor that provided timely and sincere advice." (AE P) According to another colonel, Applicant "consistently receive[d] laudatory after-action review comments by numerous deploying advisors." (AE HH) Since 2014, Applicant has worked for a company that screens translators for the U.S. Army. (Tr. 34)

Applicant and his immediate family members became naturalized U.S. citizens. (GE 2 at 2; Answer at 2-3; Tr. 67) He is estranged from the remainder of his family, as they blame him for the tragedies that they suffered. (Tr. 53, 55) With the exception of one visit to his siblings living in Malaysia, Applicant had no contact with any of his relatives between 2007 and 2010. (Tr. 52) His mother, a homemaker, remains at the family's ancestral home in Iraq. Applicant now speaks with her approximately once a month. On two occasions, he has sent her money, totalling \$1,000 (Tr. 52)

Applicant has eight siblings. Two siblings remain in Iraq. One of them lives with Applicant's mother. Applicant talks with him once per year. (Tr. 43) He does not know what this sibling does for a living. (GE 2 at 2) Since immigrating to the United States in 2006, Applicant has had no contact with his other sibling living in Iraq. (Tr. 54) He does not know what this sibling does for a living. Applicant has another sibling who is an Iraqi citizen that lives in Turkey. This sibling works for an international organization. (Tr. 71) Applicant has not talked with him since 2006. (Tr. 72)

The remainder of Applicant's siblings are British citizens. Three live in the United Kingdom, and the remaining two siblings live in Malaysia. (Tr. 56) Applicant's last contact with his siblings in Malaysia occurred in 2008, as referenced earlier in the Decision. Applicant last spoke with his relatives living in the United Kingdom when he visited there in 2014. (Tr. 56)

Applicant has an Iraqi friend who lives in the United States and drives a taxi for a living, as referenced in SOR subparagraph 1.d. He is now a naturalized U.S. citizen. (Tr. 59)

Since the 2011 U.S. military withdrawal from Iraq, sectarian and ethnic divisions have widened, fueling a major challenge to Iraq's stability. (HE III at 1) U.S. citizens in Iraq remain at high risk for kidnapping and terrorist violence. (HE II at 1) Numerous insurgent groups remain active and violence persists in many areas of the country. (HE I at 4)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors listed in the adjudicative process. 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."

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 for obtaining a favorable security decision.

## **Analysis**

### **Guideline B, Foreign Influence**

Under this guideline, "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 the U.S. interests, or is vulnerable to pressure or coercion by any foreign interest" (AG ¶ 6). Moreover, "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” (*Id.*).

Applicant’s spouse is no longer an Iraqi citizen. Similarly, his friend, alleged in subparagraph 1.d to be an Iraqi citizen living in the United States, is now a naturalized U.S. citizen. I resolve SOR subparagraphs 1.a and 1.d in Applicant’s favor.

The Government presented no evidence about Malaysia’s geo-political profile vis a vis the United States, whether Malaysia is either associated with a risk of terrorism or whether Malaysia is known to conduct espionage. Although the Government’s burden is minimal, it is a burden nonetheless. Applicant’s siblings who are United Kingdom citizens living in Malaysia do not generate a security risk.

Iraq remains a highly volatile, unstable country where terrorists, separatists, and insurgents continue to battle for control. This situation has worsened since the United States withdrew its military forces in 2011. Iraq remains highly unsafe for U.S. citizens to travel there. This lingering instability and danger are significant enough to place Applicant at a heightened risk of coercion or inducement through his mother and two siblings who remain Iraqi citizens and residents. 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,” applies.

The following mitigating conditions under AG ¶ 8 are potentially applicable:

(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 seldom talks to his siblings. Nevertheless, his situation before immigrating to the United States, together with the constant attacks on his family when he lived in Iraq render AG ¶ 8 (c) inapplicable.

Applicant has been living in the United States for nearly a decade. He is profoundly committed to promoting U.S. values. He demonstrated this daily while serving in the Iraqi Army under extraordinarily dangerous conditions, steadfastly battling terrorists daily and helping to stamp out corruption in the unit where he served, despite multiple assassination attempts and the murder of several relatives. Under these circumstances, AG ¶ 8(b) applies.

## **Whole-Person Concept**

Under the whole-person concept, 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.

I considered the whole-person concept factors when I evaluated the disqualifying and mitigating conditions, above. I conclude Applicant has mitigated the foreign influence security concern.

## **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
Subparagraphs 1.a - 1.d:	For Applicant

## **Conclusion**

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

MARC E. CURRY  
Administrative Judge