



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



In the matter of:)	
)	
)	ISCR Case No. 12-10825
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

03/27/2013

Decision

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns arising under Guideline B (Foreign Influence). Eligibility for access to classified information is granted.

Statement of the Case

On December 4, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline 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.

In an undated letter, Applicant answered the SOR and requested a hearing. The case was assigned to me on February 5, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 11, 2013, and the hearing was convened as scheduled on February 27, 2013. At that hearing, Department Counsel offered Government's Exhibits (GE) 1 and 2 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 and offered Applicant's Exhibits (AE) A through K that were admitted into evidence without objection. The record was held open until March 5, 2013, for Applicant to submit additional information. Applicant timely submitted an email with attachments that were marked as AE L through O that were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on March 12, 2013.

Procedural Matters

At the hearing, Applicant affirmatively waived the 15-day notice requirement in Paragraph E3.1.8 of the Directive.¹

Findings of Facts

The SOR alleged that Applicant was a friend of an Iraqi two-star general (SOR ¶ 1.a) and that he performed banking transactions on behalf of the Iraqi general (SOR ¶ 1.b). In his Answer to the SOR, Applicant admitted both SOR allegations. His admissions are incorporated as findings of fact.

Applicant is 48-year-old audiovisual engineer. He was born in the United States. He attended college for about three years, but did not earn a degree. He enlisted in the U.S. Air Force in February 1983 and was honorably discharged in April 1992. He was married to a U.S. citizen from April 1988 to February 2004, which ended in divorce. He has two children, ages 22 and 24, who are both U.S. citizens. He married again in 2011. He has held a security clearance since about 1982 without incident.²

During Operation Iraqi Freedom, Applicant worked for defense contractors in Iraq from 2004 to 2011. He was responsible for setting up and maintaining the audiovisual systems at U.S. military command centers in and near Baghdad. In that job, he worked closely with senior U.S. military personnel. At one of the U.S. military headquarters in Baghdad, an Iraqi two-star general, who was an intelligence officer, worked as a liaison between the U.S. military and the Iraqi government. Applicant was responsible for providing the Iraqi general with computer and audiovisual support. He also taught the Iraqi general how to use that equipment. Based on that contact, they developed a causal friendship, but had no off-duty social contact. Applicant never met the Iraqi general's wife and does not know her name. He described their relationship as:

And it was a very – just I'll do this for you; yes, sir; no, sir relationship. I just did what I was supposed to do.

¹ Tr. 11-12.

² Tr. 6-7, 17-19, 27-28, GE 1, 2.

But as time went you, you know, we became friends; traded hellos in the morning. But that was all there ever was.³

The Iraqi general had two children who were students at U.S. universities. Applicant indicated that a U.S. general played an instrumental role in arranging for the Iraqi general's children to attend those universities. At that time, Iraq did not have a reliable banking system. In 2007 or 2008, the Iraqi general asked Applicant how he could send money to his children for their tuition and living expenses. Applicant and other U.S. personnel opined that he might be able to use the Eagle Cash System, a U.S. military banking system that was set up to permit U.S. military personnel and defense contractors in combat zones to conduct monetary transactions with their financial institutions in the United States. The Eagle Cash System, however, had a \$200 limit on all transactions a military member or defense contractor could perform in a 30-day period.⁴

Applicant presented to the U.S. command staff a plan for using the Eagle Cash System to help the Iraqi general. Independently, the Iraqi general also contacted a U.S. general for assistance with his problem. Applicant volunteered to use his Eagle Cash System account to assist the Iraqi general in transferring funds to the general's children. Approval was obtained from a two-star U.S. general that authorized Applicant to exceed the monetary limit on Eagle Cash System transactions so that he could perform the money transfers for the Iraqi general. While in Iraq, Applicant performed four or five banking transactions for the Iraqi general. Each of these transactions ranged between \$2,000 and \$5,000. The money was deposited in Applicant's account and eventually transferred to the Iraqi general's children. The last transaction occurred in 2009. Applicant received no compensation for conducting those transactions.⁵

Applicant left Iraq in December 2011. His last in-person contact with the Iraqi general was about three months before he departed. After receipt of the SOR, Applicant sent the Iraqi general an email asking him to write a letter explaining their relationship. The Iraqi general sent an email in response that contained his telephone number, but did not contain a letter. Applicant then called the Iraqi general on the telephone. The Iraqi general, however, never wrote a letter for Applicant. Through these recent contacts, Applicant learned that the Iraqi general retired and was living in the United States, but he does not know the Iraqi general's mailing address or in which city he is residing. After having provided the Iraqi general assistance, Applicant was disappointed that the Iraqi general did not write him the requested letter. Applicant has no intention of contacting the Iraqi general in the future.⁶

³ Tr. 17-19, 27-37, 50-51, 54-56; GE 2; AE C; Applicant's Answer to the SOR. The quotation is located at Tr. 34.

⁴ Tr. 37-41, 42-44, 56-57; GE 2; AE C; Applicant's Answer to the SOR.

⁵ Tr. 39-42, 44-47, 54-55; AE A, C; Applicant's Answer to the SOR.

⁶ Tr. 47-56; AE L-O.

While serving in the Air Force, Applicant was awarded the Air Force Commendation Medal and three Good Conduct Medals. He presented reference letters and other documentation that attested to his reliability and trustworthiness. In Iraq, Applicant received presentation (challenge) coins from the Vice President of the United States; Commander, Multi-National Forces, Iraq; and other senior U.S. commanders.⁷

Iraq⁸

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

The United States 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 against military and civilian targets 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.

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

⁷ AE B-K.

⁸ HE I.

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.

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 B, Foreign Influence

AG ¶ 6 expresses the security concern for 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

(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.”⁹

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.”¹⁰ 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.¹¹

While serving in Iraq, Applicant developed a friendship with an Iraqi general who was an intelligence officer. Based on that friendship, Applicant helped the Iraqi general with financial transactions so that the general could send money to his children in the

⁹ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

¹⁰ ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

¹¹ 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.)

United States. Because Iraq has an unstable government that has committed human rights abuses and experienced terrorism attacks, Applicant's friendship with a high ranking foreign military member from Iraq created a heightened risk of foreign inducement, manipulation, pressure, or coercion. His relationship 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 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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant's friendship with the Iraqi general arose from his professional duties in support of U.S. forces in Iraq. His relationship with the general was of a limited scope. He had no off-duty social contact with the general. Applicant volunteered to help the general send money to his children in the United States. Senior U.S. military authorities approved Applicant's financial transactions on behalf of the Iraqi general. Applicant received no compensation for performing those transactions. The Iraqi general now lives in the United States, and Applicant has no continuing contact with him. Given Applicant's deep and longstanding relationships and loyalties in the United States, he can be expected to resolve any conflict of interest in favor of the United States. AG ¶¶ 8(a), 8(b), 8(c), 8(d), and 8(f) apply.

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 Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

For many years, Applicant has served either in the U.S. military or as a defense contractor in direct support of U.S. forces. In performing his duties in Iraq, he developed a relationship with an Iraqi general. The scope of that relationship was limited to providing the general with professional and DOD-approved support. Whatever potential conflicts that may arise from Applicant's relationship with the Iraqi general are more than counterbalanced by Applicant's interests, responsibilities, and loyalties to the United States.

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 guideline for 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 B:	FOR APPLICANT
Subparagraphs 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 a security clearance. Eligibility for access to classified information is granted.

James F. Duffy
Administrative Judge