



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-00068
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gina Marine, Esq., Department Counsel  
For Applicant: Nicole A. Smith, Esq.

07/31/2014

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**Decision**

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LYNCH, Noreen A., Administrative Judge:

On March 4, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising 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 (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on June 9, 2014. A notice of hearing was issued on June 13, 2014, scheduling the hearing for July 11, 2014. Government Exhibits (GX) 1-3 were admitted into evidence without objection. Applicant testified, and submitted Applicant Exhibits (AX) A-D, which were admitted without objection. The transcript was received on July 21, 2014. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

## Procedural and Evidentiary Rulings

Department Counsel requested that I take administrative notice of certain facts relating to Iraq. The request and the attached documents are included in the record as HE I. The facts administratively noticed are set out in the Findings of Facts, below.

### Findings of Fact

In his answer to the SOR, Applicant admitted the SOR allegations in ¶¶ 1.a through 1.d, with explanations.

Applicant, was born in Iraq in 1976.<sup>1</sup> While in Iraq, he attended university, receiving an undergraduate degree with a major in English. He came to the United States in March 2008 on a special immigration visa based on his linguistic and translation services for the U.S. military in Iraq. Applicant became a naturalized citizen in May 2013. He married his wife, who is also a naturalized U.S. citizen from Iraq. (GX 1) He has two children who are U.S. citizens. Applicant has been employed with his current employer, as an analyst, since July 2008 (GX 1) This is his first request for a security clearance with the DOD.

In May 2003, Applicant started working for the U.S. military in Iraq. He was selected as an interpreter and a translator due to his proficiency in English. He continued this work for about 12 months in a battalion. Applicant worked as a commander's interpreter. This ended in June 2004. (Tr. 22) For his work he received a commendation. (AX D)

Following this assignment, Applicant served as a language assistant and document translator for the civilian police training team (U.S. military police) from September 2004 until March 2006. (AX B; Tr. 30) He submitted a certificate of appreciation for this service. (AX C)

Applicant's next assignment for the U.S. military involved assisting at the U.S. Embassy. In 2007, he was hired to provide translation services, to analyze political and security situations, and participate in meetings with U.S. diplomats and their Iraqi counterparts. He was vetted for this position by the regional U.S. security office. For a one-year period he was granted access and "deemed not to pose a security risk to the United States Department of State facilities." (AX D) Applicant added that he was subject to a polygraph test that lasted six hours. (Tr. 32)

From approximately May 2007 until July 2007, Applicant also worked as a translator for a U.S. non-government organization (NGO) in Iraq. He completed his work with the U.S. Embassy in approximately March 2008 to come to the United States. (GX 1) When Applicant arrived in the United States he was sponsored by a U.S. Army

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<sup>1</sup>Applicant had obligatory military service in 1998 in Iraq. However, he immediately submitted an application to opt out of the service. Applicant paid \$750, and did not have to serve any time in the Iraqi military. (Tr. 20)

Colonel, who was his former supervisor in Iraq. (Tr. 36) Applicant and his family lived with his sponsor for about 45 days.

Applicant experienced combat conditions during his entire tenure with the U.S. military in Iraq. He survived assassination attempts, car bombs, and mortar attacks, even while living in the Green Zone. He was subjected to direct fire. (Tr. 28)

The SOR alleges foreign influence security concerns because of Applicant's wife who has her father and brothers in Iraq. They are citizens and residents of Iraq. (GX 1)

Applicant's father-in-law, who is in his seventies, is a citizen and resident of Iraq. He retired as an attorney working for the Iraqi government in 1991. Applicant believes he practices general law. Applicant and his wife contact him twice a year by phone. He does not know the nature of Applicant's work in the United States. Applicant has told him that he is an insurance agent. He has nothing to do with the Iraqi government. He is not an activist.

Applicant has three brothers-in-law<sup>2</sup> who are citizens and residents of Iraq. One brother-in-law is an employee of the Government of Iraq. This brother-in-law is a provincial police officer who works in the south of Iraq. (Tr. 46) Applicant and his wife have contact with him about three to four times a year by phone, Skype, or Facebook. He does not know the nature of Applicant's work in the United States. Applicant believes his brother-in-law was trained by U. S. forces. The brother-in-law has worked for the police since about 2005. He is not a member of any terrorist organization. He is not a journalist or an activist. (Tr. 49)

Applicant has another brother-in-law who is an employee of the Ministry of Health. He works as a medical assistant at clinic in a small isolated village. Applicant and his wife have phone contact with him about once a year. (Tr. 50) He is not aware of Applicant's work in the United States. He is not a member of any terrorist organization.

Although not listed in the SOR, Applicant acknowledged that he has a brother-in-law who is a barber who is a citizen and resident of Iraq. Another brother owns a small restaurant in a south province in Iraq. Applicant has contact with them about two to three times a year by phone. The conversations with all of the brothers-in-law are short and are about health and family. None of the brothers-in-law ask Applicant about his work.

Applicant's father died in 2006. His mother and other immediate family members (his three brothers) are residents of the United States. They are in the process of becoming U.S. citizens. (Tr. 38) Applicant is close to his immediate family in the United States.

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<sup>2</sup>Although the SOR states three, Applicant disclosed that he has four brothers-in-law.

Applicant and his wife purchased a home in March 2011. He has a car, and bank savings accounts. He earns approximately \$90,000 annually. (Tr. 106) Applicant has no assets or property in Iraq. (GX 2)

Applicant disclosed that he has a sister-in-law who lives in Canada and one who lives in Iraq. He has some contact with them, perhaps three times a year. (Tr. 72) Applicant has a childhood friend who has moved to Jordan. He keeps in touch with him. Another Iraqi friend, who works for the Ministry of Water Resources, is a childhood friend. He contacted Applicant and asked him to purchase a video camera for him. He sent Applicant about \$14,000 and Applicant purchased the camera and sent it to his friend. He did not think anything about it and did not tell his employer because he did not realize it might be something to disclose. He did not have a security clearance at the time and was not aware of any consequences. (Tr. 95)

Applicant submitted three letters of recommendation from former U.S. military personnel in Iraq. Each attests to Applicant's high degree of integrity, responsibility, and experience as a seasoned language instructor. The letters were written by persons who have known Applicant since 2003. They are familiar with his work in Iraq. One officer stated that Applicant was timely, professional, worked under extreme circumstances, and was adaptable and flexible. He worked extended hours to accommodate change in schedules. Applicant was an outstanding asset to the team. The officer wrote that "he is one of the few inner circle employees who I have entrusted with personnel and contact information." (AX B)

Another officer noted that Applicant has embraced American values of "hard work and dedication with fervor. He demonstrated loyalty to U.S. interests. (AX B)

When Applicant came to the United States in 2008, he became friends with a U.S. Army General, who knew him in 2003 in Iraq. The General noted that he has met Applicant and his family on various occasions in the United States. He knows how proud Applicant is to be a U.S. citizen. He strongly recommends Applicant for a security clearance. (AX B)

Applicant enjoys his work and provides a service to the U.S. Government. He is lauded for his dedication and support. He was passionate when noting that if placed in a compromising position regarding the protection of classified information and loyalty to his extended family member in Iraq, he would contact authorities to solve any problem. (Tr. ) Applicant has no plans to return to Iraq.

### **Administrative Notice**

Iraq has made significant political and economic progress in recent years, but the country still faces many challenges. Those challenges include overcoming three decades of war and government mismanagement that stunted Iraq's economy; sectarian and ethnic tensions that have slowed progress toward national reconciliation; and ongoing criminal and terrorist violence. Since 2013, there has been a marked

increase in insurgent attacks and civilian casualties. Conditions throughout the country remain dangerous.

In 2013, the U.S. Department of State reaffirmed its 2004 designation of AQI as a Foreign Terrorist Organization, denoting the U.S. Government's determination that AQI is engaged in terrorist activity, terrorism, and/or retains the capability and intent to engage in terrorist activity or terrorism, and is an entity whose terrorist activity threatens the security of U.S. nationals or the national security of the United States.

## **Policies**

When evaluating an applicant's suitability for a security clearance, an 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, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." <sup>3</sup> The burden of proof is something less than a preponderance of evidence. <sup>4</sup> The ultimate burden of persuasion is on the applicant. <sup>5</sup>

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 protect classified information. Such

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<sup>3</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>4</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>5</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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.”<sup>6</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>7</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.<sup>8</sup> The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

## **Analysis**

### **Guideline B (Foreign Influence)**

The security concern under Guideline B is set out in AG ¶ 6 as follows:

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.

A disqualifying condition may be raised by “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.” AG ¶ 7(a). A disqualifying condition also may be raised by “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(b). Finally, another disqualifying condition, “sharing living quarters with a person or persons, regardless of citizenship

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<sup>6</sup> See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

<sup>7</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>8</sup> *Id.*

status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure or coercion” may raise a disqualifying condition.

Applicant’s wife’s family are citizens and residents of Iraq. Applicant and his wife maintain contact with them. Security concerns could arise in connection with the potential that hostile forces might seek protected information from Applicant by threatening harm to his extended family. Based on this evidence, AG ¶¶ 7(a) 7(b), and 7(d) are raised.

Since the Government produced evidence to raise disqualifying conditions in AG ¶¶ 7(a), (b), and (d), 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 never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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 United States, 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 United States, or the foreign country is associated with a risk of terrorism.

Security concerns under this guideline can be mitigated by showing that “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.” AG ¶ 8(a). 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). Similarly, AG ¶ 8(b) can mitigate concerns when “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.”

Applicant worked for the U.S. military in Iraq from 2003 until 2008. He gained the respect of his superior officers. He put himself in harm's way to serve the United States. He was given a special immigration visa to come to the United States in 2008. Since then he, his wife and daughters have lived in the United States. They are naturalized U.S. citizens. Applicant's other immediate family lives in the United States. They are in the process of becoming U.S. citizens.

Applicant's in-laws do not know the nature of Applicant's work. He and his wife keep in touch with them by phone or Skype three to four times a year. He disclosed that he has childhood friends in Iraq with whom he maintains some contact. None of them know the nature of his work. Applicant's brothers-in-law have a connection to the local Iraqi government. However, Applicant has substantial interests in the United States. He has no desire to return to Iraq to live. He is committed to his personal and professional life in the United States. There is substantial mitigation in this case.

Applicant spoke about his undivided loyalty to the United States. He proved such loyalty in the past years by serving the U.S. military as a linguist and facing death. I find Applicant has such deep and longstanding relationships and loyalties in America that he can be expected to resolve any potential conflict of interest in favor of the United States. He has established application of AG ¶ 8(b). Applicant has mitigated the concerns under the foreign influence guideline.

### **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 an applicant's conduct and all the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is a naturalized U.S. citizen. He is an educated man, who lives with his wife and two daughters in the United States. His immediate family is in the United States



with him. Applicant's mother and brothers are in the process of becoming U.S. citizens. His financial assets are in the United States. Applicant has worked under extreme circumstances safeguarding U.S. interests in Iraq. He has glowing reports from his military supervisors in Iraq. He was sponsored to live in the United States by a U.S. General, who recommends him for a security clearance.

Applicant's in-laws are citizens and residents of Iraq, They have no knowledge of Applicant's work. Applicant maintains contact with them. However, his primary duty is to his own wife and children who are U.S. citizens. He will not travel back to Iraq. He will seek advice to resolve any issues that may arise in the future with the help of his FSO. For all these reasons, Applicant has mitigated the security concerns under foreign influence.

### **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 the national interest to grant Applicant a security clearance. Clearance is granted.

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NOREEN A. LYNCH.  
Administrative Judge