



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 14-01090
)	
Applicant for Security Clearance)	

Appearances

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

09/22/2014

Decision

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns about her ties to Iraq. Clearance is granted.

Statement of the Case

In 2008, Applicant applied for and was granted an interim security clearance for her work in support of the United States Department of State. Due to several changes in employment in support of both the Department of State and the Department of Defense (DOD), she has submitted multiple clearance applications through July 2013. Based on the results of a background investigation initiated by a May 20, 2012 Electronic Questionnaire for Investigations Processing (e-QIP), including Applicant's responses to

interrogatories from Department of Defense (DOD) adjudicators,¹ it could not be determined that it is clearly consistent with the national interest for Applicant to have access to classified information.² On April 29, 2014, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns about foreign influence, which is addressed in the adjudicative guidelines³ under Guideline B.

On May 15, 2014, Applicant responded to the SOR (Answer) and requested a hearing. The case was assigned to me on August 5, 2014, and I convened a hearing on September 10, 2014. DOHA received the transcript of hearing (Tr.) on September 18, 2014.

Department Counsel presented Government Exhibits (Gx.) 1 and 2. Applicant presented Applicant's Exhibits (Ax.) A - C. All exhibits were admitted without objection.

The Government also asked that I take administrative notice of certain facts germane to the issues presented by the pleadings. I granted that request and admitted, as Hearing Exhibit (Hx.) I, Department Counsel's four-page memorandum, supported by five enclosed documents. I also included, as Hx. 2, a written copy of Applicant's prepared testimony during her case-in-chief. (Tr. 45)

Findings of Fact

Under Guideline B, the Government alleged that Applicant's mother (SOR 1.a), three brothers (SOR 1.b), and two sisters (SOR 1.c) are citizens and residents of Iraq. Having reviewed the pleadings, transcript, and exhibits, I make the following additional findings of fact.

Applicant was born in Kuwait of Iraqi parents, who had been farming there since before Kuwait's independence in 1961. Her family lived in Kuwait until returning to their tribal province in southwest Iraq when the first Gulf War started in 1991, whereupon Applicant's father established the family farm where Applicant's family now resides. The farm is in a rural area of southern Iraq near the border with Kuwait. Applicant's father died in 2002. His sons, Applicant's six brothers,⁴ still manage the farm. Applicant's mother is a 64-year-old housewife who is partially paralyzed and losing her eyesight due to diabetes. Both of Applicant's sisters are housewives living nearby. One of them, along with one of Applicant's brothers, they are their mother's primary caregivers.

¹ Authorized by DOD Directive 5220.6 (Directive), Section E3.1.2.2.

² Required by Executive Order 10865, as amended, and by the Directive.

³ The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

⁴ SOR 1.b alleged that Applicant has three brothers in Iraq. However, she disclosed in the EQIP (Gx. 1), during her interviews with Government investigators, in her response to DOD interrogatories (Gx. 2), and during her hearing testimony that she actually has six brothers.

Applicant has at least weekly contact with her mother and those two siblings, and she occasionally has sent money as needed to pay for her mother's medical expenses. (Gx. 2; Hx. 2; Tr. 41 - 42, 47 - 49, 52 - 54, 68)

Applicant has not talked to three of her brothers since 1999. Aside from perfunctory holiday greetings around New Year's Day, she has no contact with her other three brothers or her other sister. After finishing high school in 1989, she moved out of the family home in Kuwait and moved to a home for female college students six hours away in Baghdad. She has not lived with her family since 1989 and has not seen any of her relatives since leaving Iraq in 1999. (Gx. 2; Hx. 2; Tr. 52 - 54, 67 - 68)

Between 1989 and 1999, Applicant earned her undergraduate and two post-graduate degrees in psychology from an Iraqi university. In 1999, she left Iraq for Yemen, the only country at that time that would grant work or student visas to Iraqis. From 1999 until 2004, she worked at a Yemeni university as an academic department head. It was in Yemen that she met and married her husband, an American employed by the U.S. State Department. They were married in April 2004. A month later, she immigrated to the United States and began the naturalization process. Applicant became a U.S. citizen in September 2007. (Gx. 2; Ax. B; Hx. 2; Tr. 55)

When Applicant and her husband first married in 2004, he had a top secret clearance with eligibility for access to sensitive compartmented information (TS/SCI). Before they could be married, her background was vetted to ensure she would not be a security risk. After she completed a security clearance questionnaire, she was interviewed by investigators and a background investigation was conducted of her family ties and other issues pertaining to her Iraqi citizenship. State Department officials concluded her circumstances did not pose a security risk relative to her husband's TS/SCI access. (Gx. 1; Gx. 2; Ax. B; Hx. 2; Tr. 35 - 36)

After immigrating to the United States, Applicant found work with contractors supporting the State Department. Also, over the next few years, as she followed her husband to various postings in the Middle East and Southwest Asia, Applicant worked as a translator and media analyst in U.S. Embassies, and for contractors supporting State Department policy initiatives. In 2008, after obtaining U.S. citizenship, she applied for a security clearance as part of her work in support of the State Department. She was granted an interim clearance pending completion of a background investigation. In 2007, Applicant was issued a U.S. diplomatic passport that expired in 2012. Her interim clearance was continued in 2010, when she changed employers and submitted another security clearance application for work with a defense contractor. In December 2011, she was hired by another federal contractor and submitted another security clearance application, thus continuing her interim access to classified information. In May 2012, she submitted a security clearance application that continued her interim clearance and initiated the current background investigation on which the SOR in this case was based. Applicant continued to hold an interim clearance until May 2014, when her clearance was revoked pending adjudication of the SOR in this case. (Answer; Gx. 2; Ax. C; Hx. 2; Tr. 36 - 41, 78)

Beginning with the pre-marital screening process in 2004, Applicant has submitted seven security clearance applications. In July 2013, the defense contractor for whom Applicant now works, sponsored Applicant's application for TS/SCI access. The information she disclosed about her family ties in Iraq has been the same in each application since 2004. (Hx. 2; Tr. 71 - 74)

Applicant's work for the State Department has earned high praise from ambassadors and other senior U.S. foreign service officials. The senior military officers and civilians for whom she now works have praised her professionalism, integrity, discretion, loyalty, and expertise. She has received or been nominated to receive multiple distinguished awards for her work in support of State Department and DOD programs. (Ax. A; Ax. B; Ax. C; Tr. 83 - 85)

Applicant and her husband live and work in the United States. All of their financial assets are here and Applicant has no property interests outside the United States. Applicant has no ownership interest in her family's farm in Iraq; she has never voted in an election there; she has not served in the Iraqi military; she has never received any benefits from the Iraqi government; and she has no plans to return to Iraq. (Answer; Hx. 2; 62 - 64)

Based on the information Department Counsel submitted in its administrative notice request (Hx. 1), I make the following findings of fact:

In 2003, the United States led a coalition to remove Saddam Hussein from power in Iraq. Following the removal of Hussein's government from power, open elections were held in January 2005 to elect a national legislature. In October 2005, a new Iraqi constitution was ratified and another round of elections took place in December 2005, Iraq's new government, a parliamentary democracy, took office in March 2006. However, political challenges remain and have inhibited the Iraqi government's ability to stabilize the country.

Despite the emergence of a constitutional government, most of the country has experienced serious problems with violent terrorists and insurgents. With the withdrawal of most U.S. military forces, the Iraqi army has proven unreliable and largely incapable of providing the same level of security and counterinsurgency force required in an increasingly unstable environment.

Iraq remains dangerous, volatile, and unpredictable. Some areas of Iraq are more peaceful and less susceptible to terrorist attacks than others; however, all areas of the country are still very dangerous. Terrorists have the ability to strike most areas of the country with explosive devices and mines. Attacks and kidnappings continue to target U.S. interests as well as well as the Iraqi populous. Even with aggressive governmental action, the threat of terrorism in Iraq remains very high. Terrorist groups can conduct intelligence activities as effectively as state intelligence services. Most recently, the rise of the Islamic State in Iraq and the Levant (ISIL), a more violent and better-funded outgrowth of Al Qaeda in Iraq, poses new security risks from Baghdad

north and west to Syria. Of particular concern is the presence of naturalized U.S. citizens from the Middle East who are returning to Iraq to fight for ISIL, and the potential that those same fighters would return to the United States to foment terrorist activity.

Human rights concerns in Iraq include a climate of violence; misappropriation of official authority by sectarian, criminal, and extremist groups; arbitrary deprivation of life; disappearances; torture and other cruel, inhuman, or degrading treatment or punishment; impunity; poor conditions in pretrial detention and prison facilities; denial of fair public trials; delays in resolving property restitution claims; immature judicial institutions lacking capacity; arbitrary arrest and detention; arbitrary interference with privacy and home; other abuses in internal conflicts; limitations on freedoms of speech, press, assembly, and association due to sectarianism and extremist threats and violence; restrictions on religious freedom; restrictions on freedom of movement; large numbers of internally displaced persons (IDPs) and refugees; lack of protection of refugees and stateless persons; lack of transparency and widespread, severe corruption at all levels of government; constraints on international organizations and non-governmental organizations' (NGOs) investigations of alleged violations of human rights; discrimination against women and ethnic minorities; human trafficking; discrimination and violence against individuals based on sexual orientation; and abusive labor practices that exploit the poor and minorities.

Applicant's family does not know what she does for a living. They believe she still works in academia. Living in a rural community, her mother and siblings are traditional and very conservative in their views on women's rights. Her brothers disapprove of the fact that she left Iraq to pursue higher education. They have effectively shunned her for marrying an American; not so much because of his citizenship but for the fact that he is from outside their tribe. (Gx. 2; Hx. 2; Tr. 51, 65 - 66)

Applicant testified the area where her family farm is located relies on mutual defense by a network of tribes in the area. As a result, the same problems that have beset areas to the north are rare occurrences in Applicant's home province to the south. (Tr. 68 - 71)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁵ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the "whole person" concept, those factors are:

- (1) The nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable

⁵ See Directive. 6.3.

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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁶ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.⁷

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.⁸

Analysis

Foreign Influence

The facts established by Department Counsel's information and by Applicant's admissions raise security concerns about Applicant's ties to Iraq. As stated in AG ¶ 6:

[f]oreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; AG ¶ 2(b).

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.

More specifically, available information requires application of the following AG ¶ 7 disqualifying conditions:

(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.

Iraq ostensibly is an ally and receives a great deal of military, economic and political support from the United States. However, Iraq also is increasingly unstable, violent, and beset by terrorist activity since the departure of most of the American military presence there. Certainly, in Baghdad and to the north and west, ISIL is wreaking havoc through open warfare against Syrian, Iraqi, Kurdish factions in an effort to establish an Islamic caliphate in the region. Kidnapping of westerners and Iraqis alike is increasingly commonplace. There is no doubt that ISIL falls within the security concerns associated with international terrorism. The presence of Applicant's immediate mother and siblings in Iraq establishes AG ¶ 7(a).

By contrast, Applicant's ties to her mother and siblings may be mitigated based on information that supports one or more of the following AG ¶ 8 mitigating conditions:

(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; and

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country.

Available information supports these mitigating conditions. As to AG ¶ 8(a), the circumstances of Applicant's mother and siblings are such that they are not likely to be targeted as a means of coercing Applicant. They are not aware that she might work in a classified environment. At most, theirs is an attenuated relationship resulting from the fact that Applicant has not been present in the family structure since 1989, has not seen any of her relatives since 1999, and has perfunctory contact with her mother and only two of her eight siblings. Despite the heightened risk associated with their presence in southwest Iraq, it is unlikely that they will be subject to the terrorist activity that pervades the areas between Baghdad and Syria. Further, the common defense of their home by a network of tribal militias further lessens the vulnerability of Applicant's family to coercion by terrorist entities.

The mitigating condition at AG ¶ 8(b) applies based on Applicant's detachment from her family since 1989, when she moved away for her education, and since 1999, the last time she saw any of her family. By definition, Applicant's relationship to her mother and siblings is close. However, most of her family has shunned her because she married outside of their tribe and because she has gone against their conservative views of the proper role of women in society. Applicant remains in contact with her mother, and with two siblings only because they are their mother's caregivers. But Applicant has established her life in the United States for 10 years through her marriage to a U.S. citizen and through her prodigious accomplishments on behalf of the U.S. diplomatic corps and the U.S. military. She has no assets or other interests overseas. She has never voted in foreign elections or sought benefits from a foreign government.

The mitigating condition at AG ¶ 8(c) warrants some application because Applicant has, at all times, disclosed her foreign contacts as required. She submitted informative clearance applications, first to marry a U.S. citizen who held a TS/SCI clearance; then on six other occasions in connection with her employment in support of national interests.

On balance, there is little likelihood that Applicant's family members in Iraq will be used to pressure Applicant into compromising sensitive U.S. interests. In the alternative, the record shows that she can be counted on to report any such activity and to continue to act in the best interests of the United States. Available information is sufficient to mitigate the security concerns raised under Guideline B.

Whole-Person Concept

I have evaluated the facts and have applied the appropriate adjudicative factors under Guideline B. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is a uniquely talented woman who has established a successful permanent life in the United States after leaving her family in 1989 and her native Iraq in 1999. The body of her professional work is sufficient to show that her loyalties lie wholly with the interests of the United States. References from senior diplomats and military officials, along with an unblemished record of

safeguarding sensitive information while holding an interim security clearance for six years, show Applicant can be relied on to act at all times in the best interests of the United States despite the unlikely event of pressures brought through her foreign associations. A fair and commonsense assessment of the record as a whole shows that Applicant has mitigated the security concerns raised by the information about her foreign contacts.

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.c: For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge