



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



In the matter of:

)  
)  
) ISCR Case No. 14-05367  
)  
)  
)

Applicant for Security Clearance

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel

For Applicant: *Pro se*

11/21/2015

**Decision**

LYNCH, Noreen A., Administrative Judge:

On March 16, 2015, 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 August 21, 2015. A notice of hearing was issued on September 11, 2015, scheduling the hearing for October 22, 2015. Government Exhibit (GX) 1 was admitted into evidence without objection. Applicant testified, presented two witnesses, and submitted Applicant Exhibits (AX) A-D, which were admitted without objection. At the request of Applicant, I held the record open for additional submissions. Applicant timely submitted a packet of documents with eight enclosures. (AX E) The transcript was received on November 2, 2015. 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. Applicant also requested that certain documents be considered for administrative notice purposes. They are included in the record as HE II. 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 1979. While in Iraq, he attended university, but he did not receive a degree. He came to the United States in 2002 as a refugee, and he became a naturalized citizen in May 2008. He is single and has no children. He received his undergraduate degree in the United States in 2008. Applicant has been employed with his current employer, as a senior analyst, since 2012. (GX 1) This is his first request for a security clearance with the DOD.

Applicant was born in a small town in Northern Iraq, which is in the Kurdish region of Iraq. He and his family are ethnic Kurds. During his childhood, he lived under the fear of injury from multiple wars. (Tr. 11) Since 1991, the Kurds have been under the protection of the USAF and RAF enforced no-fly zone. (Tr. 24)

In May 2004, Applicant started working for the United States in a volunteer federal program. He received an annual stipend, and he also attended school in the evening. (Tr. 16) After two years, he obtained employment with the United States Army Recruiting Command. He remained in that position for six years. For his work he received commendations. (AX C) At some point, he became eligible for a position of trust.

Following this assignment, Applicant was recommended by a U.S. Army general for a position in information operations. (Tr. 33) He submitted a certificate of appreciation for this service. (AX C) He worked with classified information and had an interim clearance. The company ended the contract, and Applicant found a new job. (Tr. 34) Applicant's current position as a program manager involves information that supports the U.S. coalition forces working in the Middle East. (AX E)

The SOR alleges foreign influence security concerns because of Applicant's mother, father, two sisters and an uncle who are citizens and residents of Iraq. (GX 1)

Applicant's father who is in his seventies, is a citizen and resident of Iraq. In 2006, he retired as a teacher of a primary school. Applicant contacts him once a month

by Skype. He does not know the nature of Applicant's work in the United States. He has no connection with the Iraqi government. He is not an activist. His sympathy is with the United States, and he does not support the government of Iraq.

Applicant's mother is employed in the home. She has never had any connection with the Iraqi government. She does not know the nature of Applicant's work. Applicant checks on his mother's health and may call her two or three times a week. (Tr. 40) Applicant hopes that one day he could bring his parents to the United States. He last saw his parents in 2009 for a family visit. (Tr. 41) He told his facility security officer about the trip. He traveled on a U.S. passport.

Applicant has two sisters who are citizens and residents of Iraq in the Kurdish region of the country. (AX D) One sister lives with Applicant's parents. His other sister is a farmer who lives in the same region as her parents. None of them know the nature of Applicant's work in the United States. None of them are members of any terrorist organization. They are not activists. Applicant's immediate family are Kurds. Applicant has another sister who is a U.S. citizen, lives in the United States, and is married to an American. Applicant also has a brother who lives in Sweden and is in the process of becoming a Swedish citizen. (GX 1)

Applicant has an uncle who lives in a small isolated village. He is a shop owner. He has phone contact with him about once a month. (GX 1) He is not aware of Applicant's work in the United States. He is not a member of any terrorist organization. He is also a Kurd.

Applicant owns a home that he bought in 2009. He rents the property and lives in another state. He has a car, and bank savings accounts. He is financially stable. Applicant has no assets or property in Iraq. (Tr. 47)

Applicant has a girlfriend who has been a naturalized U.S. citizen since 1993. She is a Christian. They met while working at the same place. She testified that she has known Applicant for nine years. They now live together. She also knows his family, and states that they live a very peaceful life in the mountains. (Tr. 60)

A friend and colleague of Applicant testified that he has professional and personal contact with Applicant. He states that Applicant is enthusiastic and very consistent in his support of the United States. (Tr. 65) He knows that Applicant is proud to be a U.S. citizen. Applicant is especially interested in his work that involves analyzing media in the Middle East. He is passionate about America and hates ISIS. (Tr. 65)

Applicant submitted a letter of recommendation from a former manager with the U. S. Army Recruiting Command (USAREC). He has known Applicant since 2006. His employer states that Applicant has provided linguistic and lead generation support to the USAREC. Applicant recruits qualified linguists and displays the utmost discretion when interviewing potential applicants. His employer believes that Applicant's worth

and value to USAREC exceeds his outstanding technical skills. Applicant has proven to be extremely trustworthy, and his character is beyond reproach. (AX A)

A colleague of Applicant wrote a letter of recommendation stating that he has known him since 2014 and sees Applicant as a loyal, hard-working American who is dedicated to supporting the U.S. mission of military customers. He knows about Applicant's ethnic background as a Kurd. He believes they are great allies of the United States and have suffered grievously under the former regime. (AX B)

Applicant has some childhood friends who now live in the United States, are U.S. citizens, and work for the U.S. Government. 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.

### **Administrative Notice**

Iraq 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.

Iraq's one-time Al Qaeda affiliate constitutes the most violent component of the Sunni rebellion that has become a major threat to Iraqi stability in 2014. Its antecedent called itself Al Qaeda in Iraq (AQ-I). In 2013 it adopted the name ISIL, or alternately, Islamic State of Iraq and Syria (ISIS). In late June 2014, the group changed its name to the Islamic State, and declared a caliphate in the territory it controls in Iraq as well as Syria. In May 2014, the Department of State amended the Foreign Terrorist Organization designation of AQI to add aliases, including ISIL.

The Kurdish region in Iraq is fairly autonomous. The region lies in the northeast part of Iraq. They have their own government and school system. The Kurds are a strong ally in the region. Since 1991, the United States has played a role in protecting Iraq's Kurdish autonomy - while insisting that Iraq's territorial integrity not be compromised by an Iraqi Kurdish move toward independence.

The autonomous Kurdish region, run by the Independent Kurdish Regional Government (KRG) and President Barzani, as opposed to being under the complete

thumb of the Iraqi Central Government, is home to around 6 million ethnic Kurds. It has long been marketed to the world as the “other Iraq” - a relatively safe and economically sound slice of the country which welcomes Westerners with open arms.

Kurdish fighters clash continuously with Islamic State throughout northern Iraq and Syria, though the fiercest fighting takes place outside the territory under Kurdish control. The Kurdish-run region’s resoluteness is embodied by its prominent military. The rugged army, battle hardened from years of clashing with Hussein’s forces, has proven to be an able force in countering the Islamic State.

## **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>1</sup> The burden of proof is something less than a preponderance of evidence.<sup>2</sup> The ultimate burden of persuasion is on the applicant.<sup>3</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

---

<sup>1</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>2</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>3</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

the applicant may deliberately or inadvertently fail to protect classified information. Such 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>4</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>5</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>6</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

---

<sup>4</sup> See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

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

<sup>6</sup> *Id.*

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

Applicant’s immediate family are citizens and residents of Iraq in the Kurdish region. Applicant maintains contact with them. Iraq is ostensibly an ally and receives a great deal of military, economic and political support from the United States. However, Iraq is increasingly unstable, violent, and beset by terrorist activity since the departure of most of the American military presence from there. There is no doubt that ISIL falls within the security concerns associated with international terrorism. The presence of Applicant’s immediate family and uncle in Iraq establishes AG ¶ 7(a).

Since the Government produced evidence to raise disqualifying conditions in AG ¶¶ 7(a) and (b), 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’s family lives in the Kurdish region of Iraq. They do not know what Applicant does for a living. The circumstances of Applicant’s family are such that they are not likely to be targeted as a means of coercing Applicant. They are not aware that he might work in a classified environment. He has contact with his mother and father out of respect as a son. Despite the heightened risk associated with their presence in Iraq, it is unlikely that they will be subject to the terrorist activity that pervades the area between Baghdad and Syria because of Applicant. Further, the common defense of their home by the Kurdish military further lessens the vulnerability of Applicant’s family to coercion by terrorist entities. This supports mitigation under AG ¶ 8(a).

The mitigating condition at AG ¶ 8(b) applies based on Applicant’s work for the U.S. government and the U.S. Army for almost 14 years. Applicant has established his life in the United States. He gained the respect of his superior officers. He has been highly recommended for his service over the years. He and his girlfriend live in the United States. They are naturalized U.S. citizens. Applicant’s other immediate family live in the United States and Sweden. His sister is a U.S. citizen and his brother is in the process of becoming a Swedish citizen.

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. Army. 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, with unique talents. He has established a successful professional life in the United States. The body of his professional work is sufficient to show that his loyalties lie wholly with the interests of the United States. References from military officials and others, along with an unblemished record of safeguarding information while holding a position of trust, 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 his foreign associations. He lives with his girlfriend in the United States. He has a sister and brother who do not live in Iraq. His financial assets are in the United States.

Applicant's relatives are Kurds. They have no knowledge of Applicant's work. Applicant maintains contact with them. However, his primary duty is to his own life in the United States. 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.

---

NOREEN A. LYNCH.  
Administrative Judge

