

DATE: May 21, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-05366

**DECISION OF ADMINISTRATIVE JUDGE**

**KATHRYN MOEN BRAEMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Kathryn D. MacKinnon, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant mitigated security concerns over foreign influence resulting from his sisters' citizenship in Iraq - two live in the United States (US) and two live in Iraq. Given the changed circumstances in Iraq and the fact the none of the sisters has any tie to the government of Iraq, I conclude there is no substantial likelihood that the sisters would be subject to duress and thus exercise foreign influence over Applicant. Given his history of responsible conduct, I think it improbable that foreign pressure on his sisters would create a situation that could result in the compromise of classified information. His references attest to his good character, professionalism at work, and diligence in security matters. Clearance is granted.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on January 6, 2003. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. [\(1\)](#) The SOR alleges specific concerns over foreign influence (Guideline B) in paragraph 1 and personal conduct (Guideline E) in paragraph 2. Applicant replied to the SOR allegations in an Answer notarized on February 12, 2003, and requested a hearing.

The case was assigned to Department Counsel who attested it was ready to proceed on March 11, 2003. The case was assigned to me on March 12, 2003. Subsequently, a mutually convenient date for hearing was agreed to and a Notice of Hearing issued on March 26, 2003, set the matter for May 1, 2003. At the hearing the Government introduced four exhibits which were admitted into evidence (Exhibits 1-4). Applicant testified and offered six exhibits (Exhibits A through F) which were admitted into evidence. The transcript (TR) was received on May 12, 2003.

**FINDINGS OF FACT**

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant, a 26-year-old employee, began working for a defense contractor (Employer #1) in State #1 in October 1999. In November 1999 and again in November 2000 he completed a Security Clearance Application (Standard Form 86) and requested a security clearance which he needs for the position. (Exhibits 1, 2, 3)

Born in Iraq, Applicant and his family left Iraq in May 1991 and spent until October 1991 in Jordan awaiting clearance to enter the US. His family was sponsored by his mother's three sisters and one brother (also from Iraq) who had been US citizens since the late 1970's. Applicant has lived in State #1 since ay 1992; he completed his high school education in the US. He became a naturalized U.S. citizen in July 2000 and holds only a US passport. He has attended a state university in State #1 since September 1995. He is single. His mother, father, brother born in 1973, sister born in 1962, and sister born in 1968 have also become naturalized citizens of the US. (Exhibits 1, 2, 3, 4; Exhibits A, C; TR 13-14, 19-20, 30-31)

### **Foreign Influence**

Applicant and his family have no assets in Iraq. While his father retired in Iraq, one sister who lives in Iraq collects his pension. (TR 48-49) Applicant has two sisters who are citizens of and reside in Baghdad, Iraq. Sister #1, age 33, is married with three children and Sister #2, age 32, is married with three children. The husbands of these sisters operate small businesses there; his mother applied in 1998 to have them immigrate to the US. Applicant regularly sends medicine and cash to these two sisters and his mother visited them in 2000. (Exhibits 1, 2, 4; Exhibits A, D, F; TR 20-23; 29-30, 46-48, 53) Applicant declared that his sisters in Iraq are Christians and are not involved in any Iraqi organization, regime, or any government related agency that could put them in harm. (TR 14, 24-25, 40-42) He reported his sisters in Iraq supported the role of the US in toppling the Saddam Hussein regime; they were "very happy and excited that the U.S. and the coalition forces have control over Iraq." However, they were never persecuted by Saddam Hussein or the Baath Party as they respected Christians. (TR 26, 42-44) His sisters are housewives and live near each other; because of their limited income, he and his family pool their money in the US and send the sisters money through humanitarian organizations. One sister's husband owns a small convenience store and the other works in a cement factory. (TR 27, 30, 41-42, 45-46) His sisters have reported that their neighborhood has been safe. (TR 44) Applicant has not communicated with these sisters since he went to work for his company which is a government contractor. (TR 44)

Applicant has two sisters (Sister #3 born in 1971 and Sister #4 born in 1979) who are citizens of Iraq, but reside in the US and have alien registration. They have applied to become US citizens and no longer hold Iraqi passports. (Exhibits 1, 2, 4; Exhibits C, D; TR 19-21) Sister #3 finished her high school education in Iraq and came here to work; she has taken English classes at an adult education center and is now working on an associates degree; she works for a department store as a make-up artist. She has no ties to Iraq and eager to become a citizen of the US. Sister #4 has finished high school in the US and is attending a state university with an elementary education major; she works part-time in the family food business. She volunteers as a tutor and is a member of the church youth group. She has applied to become naturalized; she has an appointment for an interview in July 2003. (TR 28-29)

Applicant attested that if his sisters were threatened in order to pressure Applicant, he would contact the proper agencies and his security officer at the company. (TR 50)

### **Personal Conduct**

When completing this SF 86 forms, Applicant thought that he only needed to list his family members who lived in the US. He had no intent to conceal his two sisters living in Iraq. (TR 24) When interviewed by the Defense Security Service (DSS) in January 2002, Applicant revealed he had two sisters still living in Iraq. He forgot to disclose this information on his SF 86 forms. He also voluntarily disclosed to DSS a trip to Mexico in March 2000 with three other friends. He had not disclosed this information on his 1999 SF 86 as the trip happened after he completed that form. When he re-signed his 2000 SF 86 after he became a naturalized US citizen, he forgot to list the trip to Mexico on the updated form. (Exhibits 1,2, 3, 4; TR 14-15, 25-26, 31-39, 49-50)

## **References and Evaluations**

A co-worker who is a security specialist for Employer #1 has worked with Applicant for three years. She attested that Applicant is highly regarded in the work place; he is truly dedicated to his job. She views him as extremely honest and trustworthy. He is a valued asset to the company with his expertise. (Exhibit B; TR 51)

The company information assurance manager stated that it is critical that Applicant obtain a Secret security clearance; he reported that Applicant has had his current position since October 1999 and is extremely competent and a motivated and innovative problem solver. He stated that Applicant is extremely security conscious. He strongly recommend favorable consideration to granting Applicant a security clearance. (Exhibit B; TR 51-52)

The LAN Services Manager also endorsed Applicant as having worked hard to improve his education level and as having been recognized for his exceptional performance; Applicant was recently promoted. He provides excellent support to the user and is a hard worker. (Exhibit B)

The pastor at his church supports Applicant as he has served on the parish council for four years; he has been a positive influence in the community. The pastor recommends Applicant wholeheartedly. (Exhibit B)

Applicant received recognition for his work in May 2001 and received Certificates of Achievement in February 2002 and in November 2002. (Exhibit E)

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

### **Guideline B - Foreign Influence**

**The concern: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are: (1) not citizens of the United States or (2) may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.**

#### **Conditions that could raise a security concern and may be disqualifying include:**

1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;

#### **Conditions that could mitigate security concerns include:**

1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States;

3. Contact and correspondence with foreign citizens are. . . infrequent;

### **Guideline E - Personal Conduct**

**Conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.**

**Conditions that could raise a security concern and may be disqualifying also include:**

2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

**Conditions that could mitigate security concerns include:**

2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;

3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts;

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

## CONCLUSIONS

### **Foreign Influence**

Applicant has mitigated the Government's security concerns over possible foreign influence raised by Applicant's close ties of affection to citizens of a foreign country: he has sisters who are citizens of Iraq - two who live in the US who have not yet been naturalized and two who live in Iraq with their families but who are seeking to immigrate to the US. The security concern under Guideline B, Foreign Influence, is that a security risk may exist when an individual's immediate family are citizens of, or resident or present, in a foreign country. These situations could create the potential for foreign influence that could result in the compromise of classified information.

While I have considered these concerns, I conclude Applicant has presented sufficient evidence to meet the very heavy burden<sup>(2)</sup> those circumstances present. These security concerns are mitigated by the fact that Applicant's sisters in Iraq have not in the past been subject to pressure and, with the US control of Iraq, any future pressure would seem unlikely. Further, he reported his sisters in Iraq supported the role of the US in toppling the Saddam Hussein regime; they were "very happy and excited that the U.S. and the coalition forces have control over Iraq." His sisters who live in the US are seeking to become US citizens and are removed from any potential pressure points. Any risk of foreign duress or influence on Applicant and/or his immediate family would appear to be slight and clearly manageable as his family here have no ties to the government of Iraq. Indeed, they are seeking to help the sisters in Iraq to immigrate to the US. Moreover, Applicant made evident that if there were any evidence of any coercion or pressure on himself or the family that he would immediately report such coercion to the proper authorities and his security manager.

Since Applicant's sisters in Iraq have no ties to their government and the sisters in the US are removed from that setting, I conclude that there is no substantial likelihood that they would be subject to duress and thus exercise foreign influence over Applicant. Given Applicant's history of responsible conduct as evidenced by his many favorable letters of reference and his performance awards, I conclude it is highly unlikely that any of his family members living in the US or in Iraq would be subject to pressures or create a situation that could result in the compromise of classified information. I conclude Applicant is not vulnerable to duress merely because of these family ties. Further, his references attest to his good character, professionalism at work, and diligence in security matters.

Security clearance decisions are predictive judgments about an applicant's security eligibility in light of the applicant's past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives. Acts indicative of foreign influence warrant careful scrutiny. After considering the Enclosure 2 Adjudicative Process factors and the Adjudicative Guidelines, I conclude these ties are not of such a nature as to create any tangible risks of undue pressure on Applicant, so foreign influence security concerns are mitigated. Thus, I resolve SOR paragraph 1 and subparagraphs 1.a. through 1.b. in Applicant's favor.

### **Personal Conduct**

Applicant failed to reveal his sisters in Iraq on his SF 86s and did not update his 2000 SF 86 with a trip to Mexico. These failures to disclose led the Government to raise security concerns over personal conduct issues. Applicant's omission of relevant and material information about this foreign ties could reflect questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations and could indicate that he may not properly safeguard classified information.

Applicant has rebutted and overcome these Government's security concerns: he demonstrated that he has mitigated<sup>(3)</sup> this concern. At the DSS interview Applicant, was not confronted, but volunteered the information about his relatives and the overseas trip. He successfully demonstrated that he had misunderstood the question on the security clearance questionnaire and the need to list his sisters living in Iraq as he thought he only needed to list family members who lived in the US. Further, there is evidence in the DSS statement that Applicant made prompt, good-faith efforts to correct the omissions before being confronted with the facts. Hence, he has met MC 2 and MC 3: the falsification was an isolated incident, was not recent, and he has subsequently provided correct information voluntarily; and he made prompt, good-faith efforts to correct the falsification before being confronted with the facts. After considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 2.a. and 2.b. under SOR Paragraph 2.

### **FORMAL FINDINGS**

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline B FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

### **DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

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Kathryn Moen Braeman

## Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. Although the Government perhaps felt no need to present evidence of the hostile nature of the relationship between the U.S. and Iraq, the Appeal Board in ISCR Case No. 01-26893 issued on October 16, 2002, outlined a standard that when there is hostility between a foreign government and the U.S. this circumstance places "a very heavy burden on Applicant " to show that family ties there do not pose a security risk. Of course, since the SOR was issued, the US has taken action against Iraq. Applicant stated that his sisters in Iraq supported the US action.
3. **Conditions that could mitigate security concerns include:** 1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability; 2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily; 3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts; 4. Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided; 5. The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress; 6. A refusal to cooperate was based on advice from legal counsel or other officials that the individual was not required to comply with security processing requirements and, upon being made aware of the requirement, fully and truthfully provided the requested information; 7. Association with persons involved in criminal activities has ceased.