

KEYWORD: Foreign Influence; Personal Conduct; Criminal Conduct

DIGEST: Applicant's parents and an aunt are Iraqi citizens. Her parents have permanent resident alien status with a home of record in the United States, but the aunt still lives in Iraq. Since 1999, her parents returned to Iraq periodically for medical care. They now live in the U.S. and do not plan to return to Iraq. On her security application (SF 86), Applicant listed her parents' home of record despite the fact they were abroad for an extended stay at the time. She has mitigated the resulting foreign influence, personal conduct and criminal conduct concerns. Clearance is granted.

CASENO: 03-19437.h1

DATE: 01/06/2005

DATE: January 6, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-19437

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esquire, Department Counsel

FOR APPLICANT

David P. Price, Esquire

SYNOPSIS

Applicant's parents and an aunt are Iraqi citizens. Her parents have permanent resident alien status with a home of record in the United States, but the aunt still lives in Iraq. Since 1999, her parents returned to Iraq periodically for medical care. They now live in the U.S. and do not plan to return to Iraq. On her security application (SF 86), Applicant listed her parents' home of record despite the fact they were abroad for an extended stay at the time. She has mitigated the resulting foreign influence, personal conduct and criminal conduct concerns. Clearance is granted.

STATEMENT OF THE CASE

Based on information available to the government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to continue Applicant's security clearance. ⁽¹⁾ On January 26, 2004, the Defense Office of Hearings and Appeals (SOR) issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline B (foreign influence), Guideline E (personal conduct), and Guideline J (criminal conduct).

On February 9, 2004, Applicant answered the SOR (Answer) and requested a hearing. The case was originally assigned to an Administrative Judge but was transferred to me on July 2, 2004. I convened a hearing in this matter on August 26, 2004. At hearing, Department Counsel submitted nine exhibits (GE 1 - 9) in support of the SOR. ⁽²⁾ Applicant, through counsel, submitted four exhibits (AE A - D) and the testimony of four witnesses, including the Applicant. DOHA received the hearing transcript (Tr.) on September 8, 2004.

FINDINGS OF FACT

Applicant admitted the allegations in SOR paragraph 1, but denied those in paragraphs 2 and 3. Her admissions are incorporated herein as facts. After a thorough review of the pleadings and exhibits, I make the following additional

findings of fact:

Applicant is 45 years old and, along with her husband, owns a small information technology company doing business with the Department of Defense. Applicant was born in Iraq. After earning her engineering degree in Iraq, she moved to Great Britain in 1979 to study for a masters degree in engineering. She returned to Iraq in 1980, but emigrated to the United States in 1991, shortly after the first Gulf War, with her first husband and two children, then ages 10 and 6. She has not returned to Iraq and has no future plans to do so.

Applicant was raised in the Armenian Christian tradition. As a non-Muslim and a female in Iraq, she felt disenfranchised and looked down upon, conditions that contributed to her desire to leave Iraq and build a life in America. Applicant has no financial or property interests there and has no ties to any former or current Iraqi government organizations.

Applicant divorced her first husband, an Iraqi citizen who has since become a naturalized U.S. citizen, in September 1997. The same month, she herself was naturalized and has raised her children in the United States. Her son recently graduated from a prominent U.S. university and works for a major U.S. corporation; her daughter is studying engineering at a U.S. university. Applicant married her current husband, a native-born United States citizen, in March 1999.

Applicant's elderly parents are both Iraqi citizens who obtained U.S. permanent resident alien (PRA) status in December 1999. Her father is a retired scientist who specialized in animal husbandry after receiving his bachelors and masters degrees from universities in the United States where he lived and studied between 1948 and about 1962. He now is in his 80s, retired from his job in the Iraqi agricultural industry since 1982, and suffers from a variety of serious health problems. Applicant's mother, an Armenian Christian, worked in administrative jobs for 22 years for British Petroleum (BP) in Iraq. She continued working for a short time after BP was nationalized as the Iraqi Oil Ministry, retiring in 1976. Applicant's mother is in her 70s and has serious health concerns as well.

Since receiving PRA status, Applicant's parents have traveled back to Iraq by way of Jordan to receive medical care they could not obtain in the United States because of their immigration status. They stay in those locations from two to three months each time rather than travel back and forth because the travel is physically taxing and some of their treatment is extensive. When in Iraq, they stay in a home they have owned for several years. They have spent, on average, nine to ten months of each year in the U.S. since 1999. However, they use Applicant's brother's address in the United States as their home of record. The same address is listed on Applicant's father's U.S. driver's license. As of this hearing, Applicant's parents were expected to return to the U.S. the next month and remain permanently so they could apply for U.S. citizenship, for which they would be eligible in December 2004.

Applicant submitted a Personnel Security Clearance (SF 86) on April 8, 2003. This is the first time she has applied for a

security clearance, and it was occasioned by the fact she and her husband were seeking work for their company as part of a joint venture with another defense contractor. Their venture was new at the time and her husband acted as the company facility security officer, but he had no background or training in that role and there was no one to give them advice or answer questions about the form.

In response to SF 86 question 9, which asks for information about her relatives, including place and date of birth and a current address, she disclosed that her parents were Iraqi and provided her parents' U.S. address. At the time she completed the form, she knew her parents were overseas, either in Jordan or in Iraq. Applicant interpreted the form (Question 9) as soliciting her what she thought was her parents' home of record since their arrival in 1999 and not their whereabouts at the time. She also disclosed her parents' citizenship and immigration status in response to SF 86 question 10. When interviewed by a Defense Security Service (DSS) agent five months later, she provided accurate and comprehensive information about her own foreign background and her parents' circumstances.

Applicant also has a maternal aunt who is a citizen of and still resides in Iraq. The last time she saw her aunt was at least 15 years ago, before Applicant left Iraq for good. The only contact she has had with her aunt since has been through sporadic phone calls between her mother and her aunt. Applicant's aunt is an elderly, retired school teacher with no ties to any foreign government.

When Applicant and her parents left Iraq, the country was ruled by a totalitarian regime that had warred against its neighbors and the United States, had committed crimes against humanity, and which stifled any hint of democratic process for its citizens. Largely isolated from the rest of the world after the first Gulf War, Iraq's former regime is alleged to have supported international terrorism and did engage in aggressive intelligence gathering against the United States. However, in March 2003, the United States and Great Britain invaded Iraq, arrested or killed the heads of its government, including its intelligence service, and have spent the intervening time re-building Iraq, instituting a provisional government of U.S. and U.S.-backed officials, and is trying to stabilize the country so that democratic elections can be held there for the first time in several decades.

Notwithstanding the efforts of U.S. and allied forces, Iraq remains a very dangerous place for anyone even remotely aligned with efforts to reshape Iraq's government. The risks of kidnappings, suicide bombings, and random acts of terror is not limited to American targets, but has victimized Iraqis and other foreign nationals alike.

Applicant enjoys a reputation for honesty, diligence and commitment to her community here in the U.S. She is active in her church and has been successful in her personal and professional life since arriving in the U.S. nearly 14 years ago. She has never had any contact with the old Iraqi regime.

POLICIES

The Directive sets forth adjudicative guidelines⁽³⁾ to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. 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. Having considered the SOR allegations and having reviewed the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are those conditions listed under Guideline B (foreign influence), Guideline E (personal conduct), and Guideline J (criminal conduct).

BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽⁴⁾ for an Applicant to either receive or continue to have access to classified information. The government bears an initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden, it establishes a *prima facie* case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion.⁽⁵⁾

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. The Government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, 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.⁽⁶⁾

CONCLUSIONS

Under Guideline B (Foreign Influence), security concerns arise 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 not citizens of the United States or may be subject to duress. These situations create the potential for foreign influence that might, in turn, result in a 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.⁽⁷⁾ Here, the concern is focused on Applicant's ties of affection to her parents and to her mother's sister, all of whom are citizens of a foreign country, and one of whom (her aunt) still lives in a foreign country.

Department Counsel has presented sufficient evidence to establish a *prima facie* case for disqualification under Guideline B. The Applicant has close ties of affection who are citizens of and / or resident in a foreign country. Applicant's parents have had PRA status since December 1999, but have returned to Iraq for long periods of time since then for medical reasons. They have also stayed in Jordan for safety reasons during the months immediately before and during the U.S. invasion of Iraq. (SOR 1.a, 1.b, and 1.c) Applicant's parents were each employed by the Iraqi government at one time (SOR 1.d and 1.e), and Applicant's maternal aunt is an Iraqi citizen still living there. Guideline B disqualifying condition (DC) 1⁽⁸⁾ and DC 3⁽⁹⁾ apply here.

In response, Applicant has shown her parents now spend most of their time in the U.S. and intend to remain in the U.S. after September 2004. They also intend to apply for U.S. citizenship as soon as they are eligible. As for their stays overseas, Applicant provided a plausible explanation based on her parents' poor health and inability to access affordable health care in the U.S. It is also reasonable that they would stay in the region, but out of harm's way, in Jordan during the 2003 invasion. Further, Applicant's parents have been retired from their government jobs for over 20 years. They have not been contacted by the former Iraqi regime nor any indication they maintained any contacts with that government after they retired.

The same holds true for Applicant's aunt, a retired school teacher in Iraq. Even were her aunt's circumstances different, Applicant has had only minimal contact with her aunt in the past 15 years.

The current reality is that the U.S. is the prevailing governmental entity in Iraq, but that country remains a very dangerous place because of ongoing resistance by remnants of the previous regime and other groups trying to counter U.S. efforts there. Because Iraq is such a dangerous place, Applicant's parents' decision to live in the U.S. would eliminate the likelihood, already remote, that Applicant's parents or aunt would be targeted in order to exert pressure on Applicant. Guideline B mitigating condition (MC) 1⁽¹⁰⁾ applies with respect to Applicant's parents and her aunt. MC 3⁽¹¹⁾ applies with respect to her aunt. On balance, I conclude the available information shows Applicant has met her burden in response to the government's case and has mitigated the security concerns under Guideline B.

Under Guideline E (personal conduct), a security concern may arise where it is shown an applicant has shown poor judgment, dishonesty, or trustworthiness. This guideline may also apply in cases where an applicant's conduct shows a willingness to disregard rules and regulations, and where there is conduct of a questionable or embarrassing nature.⁽¹²⁾

Here, the government's concern is that Applicant allegedly deliberately falsified her SF 86 when she listed a U.S. address for her parents when they allegedly lived in Iraq. (SOR 2.a)

Based on the facts presented, I conclude the government has not established a *prima facie* case for disqualification under this guideline. DC 2⁽¹³⁾ is potentially applicable here; however, application of DC 2 requires that the Applicant acted deliberately to mislead the government about relevant and material information. The totality of the evidence on this point shows that Applicant's parents have had PRA status since 1999 and have used a their son's address for immigration records and for things like a driver's license and social security cards. Applicant, completing an SF 86 for the first time without benefit of knowledgeable advice about what was expected in this circumstance, had a choice between listing a U.S. address for her parents and listing an Iraqi address she was not sure was still valid. Nor was she sure her parents were even there. She also had to consider the fact her parents had spent most of their time in the U.S., at least during the preceding year. She made a deliberate choice to list the U.S. address, but I do not conclude based on this record that the information was false or misleading.

In fact, in the same response about her parents, she disclosed they were born in Iraq, so the government was on notice they were possible foreign ties of affection. Comprehensive information about her parents' travels between Iraq and the U.S. as well as their immigration status was disclosed at the Applicant's subject interview in September 2003. MC 2 and MC 4 apply here. In consideration of the mitigating information presented here, and mindful of the factors set forth in Directive, Section E2.2.1,⁽¹⁴⁾ I conclude Guideline E for the Applicant.

Under Guideline J, criminal conduct is a security concern because such conduct may indicate an unwillingness to abide by rules and regulations, and may show the applicant to be lacking in reliability and trustworthiness. Here, there is a single allegation of criminal conduct is based on Applicant's alleged falsification of her SF 86, which, if proved, is a violation of federal law. (SOR 3.a) Title 18 of the United States Code, Section 1001, makes it a crime to knowingly and willfully make a false statement or representation to any department or agency of the United States concerning a matter within its jurisdiction. As discussed above, I conclude the information Applicant provided was not false or misleading; nor was there an intent to deceive the government about her parents whereabouts or circumstances. None of the listed disqualifiers apply and I conclude Guideline J for the Applicant.

I have carefully weighed all of the evidence, and I have applied the disqualifying and mitigating conditions as listed under each applicable adjudicative guideline. A fair and commonsense assessment⁽¹⁵⁾ of the record before me mitigates the government's concerns about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. I conclude it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Foreign Influence (Guideline B): FOR THE APPLICANT

Subparagraph 1.a: For the Applicant

Subparagraph 1.b: For the Applicant

Subparagraph 1.c: For the Applicant

Subparagraph 1.d: For the Applicant

Subparagraph 1.e: For the Applicant

Subparagraph 1.f: For the Applicant

Paragraph 2, Personal Conduct (Guideline E): FOR THE APPLICANT

Subparagraph 2.a: For the Applicant

Paragraph 3, Criminal Conduct (Guideline J): FOR THE APPLICANT

Subparagraph 3.a: For the 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. Clearance is granted.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. GE 4 through 8 were submitted for informational purposes only and I agreed to take official notice of them. GE 9 is simply a cover sheet identifying the other eight exhibits.
3. Directive, Enclosure 2.
4. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
5. *See Egan*, 484 U.S. at 528, 531.
6. *See Egan*; Directive E2.2.2.
7. Directive, E2.A2.1.1.
8. Directive, E2.A2.1.2.1. 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;
9. Directive, E2.A2.1.2.3. Relatives, cohabitants, or associates who are connected with any foreign government;
10. Directive, E2.A2.1.3.1. 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;
11. Directive, E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent;
12. Directive, E2.A5.1.1.
13. Directive, E2.A5.1.2.2. 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;
14. E2.2.1. The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors:
 - E2.2.1.1. The nature, extent, and seriousness of the conduct;
 - E2.2.1.2. The circumstances surrounding the conduct, to include knowledgeable participation;
 - E2.2.1.3. The frequency and recency of the conduct;
 - E2.2.1.4. The individual's age and maturity at the time of the conduct;
 - E2.2.1.5. The voluntariness of participation;
 - E2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes;
 - E2.2.1.7. The motivation for the conduct;
 - E2.2.1.8. The potential for pressure, coercion, exploitation, or duress; and
 - E2.2.1.9. The likelihood of continuation or recurrence;
15. Directive, E2.2.3.