

KEYWORD: Foreign Influence

DIGEST: Applicant is a 30-year-old translator working for a defense contractor. For the past 2.5 years he has worked in Iraq under wartime conditions with armed military forces. When he was 17 years old, Applicant and his relatives fled Iraq. He is a U.S. citizen now. One brother was sought by the prior Baathist Iraqi government, and Applicant had concern for his safety. There have been no incidents regarding his brother's safety since 2003, in part because the brother moved to a safer area of Iraq. Applicant mitigated the foreign influence security concern by his actions over the past 2.5 years in a war zone. Clearance is granted.

CASENO: 03-25152.h1

DATE: 01/31/2006

DATE: January 31, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-25152

**DECISION OF ADMINISTRATIVE JUDGE**

**PHILIP S. HOWE**

**APPEARANCES**

**FOR GOVERNMENT**

Braden M. Murphy, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is a 30-year-old translator working for a defense contractor. For the past 2.5 years he has worked in Iraq under wartime conditions with armed military forces. When he was 17 years old, Applicant and his relatives fled Iraq. He is a U.S. citizen now. One brother was sought by the prior Baathist Iraqi government, and Applicant had concern for his safety. There have been no incidents regarding his brother's safety since 2003, in part because the brother moved to a safer area of Iraq. Applicant mitigated the foreign influence security concern by his actions over the past 2.5 years in a war zone. Clearance is granted.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On October 7, 2004, DOHA issued a Statement of Reasons <sup>(1)</sup> (SOR) detailing the basis for its decision-security concerns raised under Guideline B (foreign influence). Applicant answered the SOR in writing on November 13, 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on May 25, 2005. On July 15, 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. DOHA received the hearing transcript (Tr.) on July 27, 2005.

### **FINDINGS OF FACT**

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 30 years old, a native-born Iraqi who fled Iraqi with his family in 1991 when he was 17 years old. In the

turmoil of the post-war period in Iraq, Applicant was able to walk across the Iraqi-Turkish border. In Turkey he stayed in refugee camps for a year, then went to Greece, where he and his family members remained until they immigrated to the U.S. in 1993. Applicant became a U.S. citizen in 2000. He owns a home in the U.S. in which his 72-year-old mother currently lives. Applicant works as a translator for the U.S. forces in Iraq, and has done so for the past 2.5 years. (Tr. 17-37, 59, 108, 109; Exhibits 1 and 2)

Applicant's father was a taxi driver in Iraq, and was tortured and killed by the Baathist government in 1988. Applicant's siblings eventually fled Iraq, some with him in 1991, and others later. Only Applicant and one sister are U.S. citizens. His mother is an Iraqi citizen with permanent residency in the U.S. and she is trying to obtain U.S. citizenship. Two sisters are permanent residents of the U.S. while holding Iraqi citizenship. Applicant has one brother in the U.S. who is an Iraqi citizen, one sister in Canada who is a Canadian citizen, a brother in Canada who is a resident alien applying for Canadian citizenship, and one brother who is a British citizen. Another brother lives in Iraq in the northern area. (Tr. 59-69, 98; Exhibits 1 and 2)

Applicant's brother in Iraq was a member of the Iraqi Army from 1982 until 1991. The Baathist government party wanted him to join it, but he bribed their solicitation officers to leave him alone. In 1999 he fled to Syria, not returning to Iraq until 2003 after the U.N. coalition invasion. Applicant visited him there in 2002, but has not gone to Syria since then. Applicant's brother now lives in the northern part of Iraq selling supplies to the government, and making about \$3,000 monthly. Applicant made a statement in July 2003 to a government investigator that any contact between Applicant and his brother could result in the brother's torture and death by the Baathist government forces in Baghdad. That concern is still applicable to their interaction because some Baathist elements are part of the current insurgency in Iraq. Applicant has not seen nor spoken to his brother since late in 2003. Applicant told his family he could not be responsible for his brother, and his brother had to leave the country or go somewhere away from Baghdad, which his brother did. His brother wants to immigrate to the U.S. and applied for permission last year. (Tr. 31, 53, 65, 66, 72-88, 96, 115; Exhibits 1-3)

Applicant visited Syria, Jordan, Lebanon, and Turkey in 2000. He visited relatives on that trip, and did some site-seeing. He has not returned to those countries since his visit in 2002 to Syria and Jordan. In Jordan he visited relatives and the woman who became his fiancée. She and Applicant are no longer engaged. His former fiancée now lives in the U.S., is an Iraqi citizen with resident alien status. Her parents still live in Jordan and are Iraqi citizens. Applicant broke off the engagement eight to ten months ago because his fiancée was not happy he was working for long periods in Iraq. Applicant's vacation destinations and travels are restricted by his employer, so he can only travel to the U.S., Britain, or Australia for safety and security reasons. (Tr. 41-50, 53, 55-57, 117; Exhibits 1-3)

Applicant sent his brother \$400 every two months during the period he lived in Syria with his wife and children. Applicant also gave \$200 every month to his mother, who sent it to cousins living in Iraq until 2003 when the Baathist government was defeated by the UN coalition. Applicant does not provide money to any relatives in Iraq now because they all make "good money" under the new government in Iraq. All the relatives to whom the \$200 went until 2003 have now immigrated to European countries and none live in Iraq. (Tr. 69, 70, 82, 113-114; Answer)

Applicant does an excellent professional job of translating for military forces in Iraq. His commanders praise his clear and concise translations, and his abilities to interact well with all team members. He translates in training sessions for local force trainees. He is often one of the first ten persons into a location to be able to translate for U.S. forces from the start of the situation in which they are involved. (Tr. 35-37; Exhibits A-G)

Syria is a state sponsor of terrorism, according to the U.S. Department of State. Iraq and Syria have a history of human right abuses. Jordan has a better record of respect for human rights, but particular cases show the need for improvement, according to the U.S. Department of State reports admitted as evidence in the hearing. (Tr. 131; Exhibits 4-10)

## POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry*

§ 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring

pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. ay 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at \*\*6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

*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 not citizens of the United States or 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 are relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.*  
E2.A2.1.1

## **CONCLUSIONS**

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR. The foreign influence Disqualifying Conditions (DC) applicable here are

DC 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 E2.A2.1.2.1) and DC 6 (Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government. E2.A2.1.2.6). Other than Applicant and one sister, all his family members are citizens of other countries, including Canada, Britain, Australia, and Iraq. He has contact with them, particularly his mother with whom he speaks frequently. His other relatives he telephones anywhere from two to six months apart. His job as a translator in a war zone that is present-day Iraq makes his conduct, his work, and him vulnerable to coercion or pressure by the insurgency forces in Iraq. His brother's situation also makes him vulnerable to coercion, but the degree of that vulnerability is probably equal to any person in Iraq who works for the new government or aids the U.S. or UN coalition forces. The allegations in the SOR pertain to conduct and situations all of which have changed or improved since they occurred. Applicant does not visit the countries listed in the SOR anymore because his employer strictly controls his vacation and travel destinations. His relatives to whom he gave money in the past no longer live in Syria or Iraq as alleged. His former fiancée is an Iraq citizen, but she now lives in the U.S.

The Mitigating Condition (MC) applicable is MC 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 E2.A2.1.3.1). None of Applicant's relatives are agents of a foreign power. None except one brother are in a position to be exploited by a foreign power that could force Applicant to choose between loyalty to him or the U.S. because all his relatives are out of Iraq and Syria. Jordan is only tangentially an issue because his former fiancée's parents live there, and I do not consider them a factor at all.

Regarding Applicant's brother, Applicant has a concern for his safety. But that concern has existed for several years, he has undertaken security steps to avoid contact with him for the safety of both, and the brother now lives in a more secure and stable area of Iraq. The former government that caused Applicant's concern previously is no longer in power. The brother is in business supplying materials to the coalition and U.S. forces, which actions place him in no greater danger and subject to no greater exploitation vulnerability than any other Iraqi who is helping or working for the U.S. forces in Iraq. Applicant is working for a defense contractor employed as a translator in dangerous wartime situations with the U.S. armed forces. The new government of Iraq is friendly to the U.S., which has enabled its formation and new constitution.

The strictures of the guideline are mitigated by the unique situation and condition in which Applicant finds himself. He has worked in this environment for nearly three years, mitigating by his actions security concerns that would disqualify others. Applicant took the proper actions to decrease or eliminate vulnerability to his brother by not contacting him. By doing that, Applicant insulated himself from any coercion. While he reaffirmed his concern for his brother at the hearing, he also stated his brother now living in the northern area and out of Baghdad, with the former government gone, and it is safer for his brother now. Applicant told his family he could not be responsible for him. His brother is trying to immigrate to the U.S., and is the last member of Applicant's immediate family still in Iraq. It is anomalous for someone who was born in a country in which the U.S. is trying to promote democracy, who helps our forces for 2.5 years without incident of coercion, pressure, or exploitation from terrorists and outlaws, is disqualified from a security clearance because of an overly strict interpretation of the guideline not written to be applied in a wartime situation. For these reasons, applying the whole person concept, and considering all of the evidence, I conclude this guideline for Applicant.

**FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: For Applicant

**DECISION**

In light of all of 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 Applicant. Clearance is granted.

Philip S. Howe

## Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).