

KEYWORD: Foreign Influence; Personal Conduct; Criminal Conduct

DIGEST: Applicant has eight siblings , a sister-in-law, and a cousin who are citizens and residents of Iraq. Until about 2004, he provided his sister and sister-in-law in Iraq with approximately \$500 twice a year in financial support. He also maintains telephone contact with his brothers in Iraq. Applicant was not forthcoming about details of an arrest for soliciting prostitution in signed, sworn statements he provided in 1996 and 2003 to authorized investigators of the Department of Defense. He failed to mitigate Guideline B, E, and J security concerns alleged in the Statement of Reasons. Clearance is denied.

CASENO: 03-25362.h1

DATE: 02/28/2006

DATE: February 28, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-25362

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

Francisco Mendez, Esq., Department Counsel

FOR APPLICANT

William Savarino, Esq.

SYNOPSIS

Applicant has eight siblings, a sister-in-law, and a cousin who are citizens and residents of Iraq. Until about 2004, he provided his sister and sister-in-law in Iraq with approximately \$500 twice a year in financial support. He also maintains telephone contact with his brothers in Iraq. Applicant was not forthcoming about details of an arrest for soliciting prostitution in signed, sworn statements he provided in 1996 and 2003 to authorized investigators of the Department of Defense. He failed to mitigate Guideline B, E, and J security concerns alleged in the Statement of Reasons. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On February 8, 2005, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on March 30, 2005, and elected to have a hearing before an administrative judge. The case was assigned to me July 5, 2005. On November 9, 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 called no witnesses, submitted seven exhibits for admission to the record (Ex.s 1 through 7), and offered three documents for administrative notice, which were enumerated I through III. The Government's exhibits and documents for administrative notice were admitted to the record without objection. Applicant called no witnesses, submitted eight exhibits for admission to the record. (Ex.s A through H), and offered ten documents for administrative notice, which were enumerated Applicant's I through X. Before the end of the hearing, Applicant withdrew his Document VI for Administrative Notice. The Government objected to the relevance of Applicant's Exhibit G, a CD-ROM recording of a segment of a television news program on which Applicant spoke two sentences regarding the regime change in Iraq. I overruled the Government's objection and admitted Ex. G for whatever relevance it might have. Applicant's other exhibits were admitted without objection. After discussion, Applicant withdrew Applicant's VI, and, without objection, his other documents offered for administrative notice were admitted to the record. On November 23, 2005, DOHA received the transcript (Tr.) of the proceeding.

FINDINGS OF FACT

The SOR contains two allegations of disqualifying conduct under Guideline B, Foreign Influence, two allegations of disqualifying conduct under Guideline E, Personal Conduct, and one allegation of disqualifying conduct under Guideline J, Criminal Conduct. Applicant admitted one allegation under Guideline B and admitted with explanation the other allegation under Guideline B. He denied the two allegations under Guideline E and the one allegation under Guideline J. Applicant's admissions are incorporated as findings of fact.

Applicant has been employed since 1986 as a Senior Engineer by a government contractor. He is 62 years old, married, and the father of an adult son. (Ex. 1.)

Applicant was born in Iraq and received his early education there. In 1962, he received an Iraqi government scholarship and permission to attend an institution of higher education in Europe. In exchange for the Iraqi government's support of his higher education, Applicant was required to work for the government of Iraq for approximately six years after graduation. When Applicant returned to Iraq, he served in the Iraqi army from September 1968 to April 1971. After leaving the army, Applicant was assigned to work for the Iraqi telephone and telegraph administration. In the course of carrying out those duties, Applicant was sent to an Asian country, where he met a U.S. citizen, and they were married in 1975. Because Iraq did not allow its citizens to marry foreigners, Applicant "defected" from his mandatory job with the Iraqi government and requested permission to immigrate to the U.S. Agents of the Iraqi government went to Applicant's place of work in Japan in search of him. (Ex. 4, 1-5.)

Applicant came to the U.S. with his wife in February 1976. He became a U.S. citizen in 1980 and earned a graduate degree in 1984. (Ex. 1; Tr. 56.) He has held a security clearance since approximately 1980. (Tr. 62) He has not traveled to Iraq in over 30 years. (Answer to SOR at 4.)

In approximately 1985, one of Applicant's brothers was discharged from the Iraqi army because Applicant was in the U.S. (Tr. 71.) Some of Applicant's relatives were imprisoned and executed during the rule of Saddam Hussein. (Tr. 64.)

Applicant has three brothers, five sisters, a sister-in-law, and a cousin who are citizens and residents of Iraq. Applicant's mother is no longer living. When his mother was living, Applicant sent her approximately \$1,000 four times a year for her support. Additionally, he tried to send his mother clothing, but the clothing was returned. (Ex. 1; Ex. 3, at 1.)

In the community where Applicant lives, his brother-in-law owns a restaurant that specializes in serving Iraqi food.

Applicant has a financial interest in the restaurant. Sometime after the fall of Saddam Hussein's government, a television crew came to the restaurant when Applicant was there. Applicant, along with three other Iraqi-American men, appeared on a local television news program. The men all denounced Saddam Hussein. Applicant was identified as saying: "Whatever the worst thing can happen to the human being I want it to happen to him, you know. You know, I'd like to see him in hell." (Ex. H ;Tr. 47.)

Until about 2004, Applicant sent approximately \$500 twice a year to his widowed sister and widowed sister-in-law. In his answer to the SOR Applicant said he no longer needed to send money to his widowed relatives in Iraq because they are now receiving support from the U.S. government under the Occupation Authority. He no longer sends them money and does not intend to send them money in the future. (Answer to SOR at 4-5)

Two of Applicant's brothers who are citizens and residents of Iraq are merchants. The third brother is a statistician and might be employed by the government. (Tr. 65-66.)

Two of Applicant's five sisters who are citizens and residents of Iraq are homemakers. One sister is an unemployed agricultural engineer; one is a teacher, and one is a teacher of Arabic. (Tr. 66-67.) The teachers are considered to be government employees.

Applicant communicates with his brothers in Iraq approximately once every two months.

(Tr. 68.) Applicant has not spoken with two of his sisters for many years. The others he may speak with once every six months. (Tr. 69.)

Applicant has a cousin, a cardiologist, who is a citizen and resident of Iraq. Applicant speaks with this cousin two or three times per month by telephone. (Ex.2 at 3.)

Applicant has correspondence with females in Internet chat rooms on a monthly basis. Some of these women tell Applicant they are foreign citizens, but he does not know the real names of the women or if what they are telling him is true. Applicant's wife knows in general about his participation in these Internet chat rooms. (Ex. 2 at 4.)

Applicant has two male friends who were formerly citizens and residents of Iraq. He sees both of these friends one or two times a year. One friend is now a naturalized U.S. citizen and lives in the U.S. The other was a classmate of Applicant's when he attended school in Europe. This individual is currently a citizen of a European country and resides in a Middle Eastern country. (Ex. 4 at 7-8.) The three men have a custom of traveling together for pleasure once or twice

a year for approximately one to two weeks. On these trips they stay at hotels, go to dinners and bars, and go sightseeing. (Ex. 4 at 5-8.)

Applicant and his wife took an international trip together for pleasure in 2001. Applicant traveled by himself to Europe for pleasure and sightseeing and stayed with relatives in 2000; in 1998 and 1999, he traveled by himself for pleasure and sightseeing to countries in Latin and South America twice; and in 1995 and 1996 he traveled by himself to Canada three times. Applicant denied he participated in any activity on these trips that was embarrassing or illegal in the U.S. (Ex. 4 at 5-8.)

On April 28, 1996, Applicant was arrested and charged with soliciting sex from a prostitute. (Ex. 5; 6;A; Tr. 76-79.) The district court statement of probable cause specified Applicant picked up the prostitute in his car, drove her to the back of a building, and gave her \$20.00 to perform a sexual act on him. (Ex. A.) Applicant was found guilty of the solicitation charge, fined \$250, and awarded six months probation before judgment. (Ex 3 at 2.)

Applicant had completed a security clearance application prior to the solicitation arrest and charge. He contacted his security officer and informed her he needed to add some information to his application. In September 1996, Applicant gave a signed, sworn statement to a special agent of the Defense Investigative Service. In the statement he added a number of specifics about his relationships with his family in Iraq. In the last paragraph of his signed, sworn statement, Applicant stated he had picked up a hitchhiker, discovered she was a prostitute, and was trying to tell her to leave his car when the police showed up and arrested him for solicitation. In his statement to the special agent, Applicant said nothing about paying the prostitute for sex or acknowledging responsibility for the crime. (Ex. 3, at 2.)

In April 2003, Applicant provided a second signed sworn statement to a special agent of the Defense Security Service. (Ex. 2 at 7-8.) He described the events of April 28, 1996 as follows:

In Apr 96, I picked up a hitchhiker in [city, state] while on my way to [another city]. I usually picked up hitchhikers to keep me company on the drive. I discovered she was a hooker, stopped the car, and told her to get out. The police approached the car and after speaking to the woman, believed I asked the woman for sex in exchange for money. I believe they may have been watching me as soon as I picked her up. I was initially charged a misdemeanor of solicitation of a prostitute. I went before a judge [name of court and jurisdiction] where I pled not guilty. I paid a \$250 fine and the judge reduced the charge to probation before judgment. Since then I have not been involved in any undetected criminal conduct. I can not be blackmailed, pressured or coerced due to this incident. I also have supplied details about this incident in prior investigations.

Applicant's wife provided an affidavit stating they were having marital problems at the time of Applicant's solicitation of the prostitute and that her husband had told her what he had done and promised that such conduct would not occur again. (Ex. B)

I take administrative notice that, while the U.S. government supports Iraq's attempts to develop a strong and viable democratic government, living conditions for Iraqi citizens are extremely dangerous. The risk of terrorism directed against U.S. citizens and interests in Iraq is also extremely high. U.S. citizens are strongly warned against traveling to Iraq, particularly on commercial aircraft, since there is credible information that terrorists are targeting civil aviation. Iraq has become a central front in the global war on terrorism, with attacks on Coalition and Iraqi forces by former regime elements, criminals, and foreign fighters associated with al-Qaida. Iraq's weakened economy has given rise to increased crime and poverty. (Government Documents for Administrative Notice I, II, and III; Applicant's Documents for Administrative Notice I, II, and III.).

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 restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

In addition to the guidelines in the Directive, official DoD policy guidance must also be considered. Of particular relevance in this case is an August 16, 2000, memorandum from Assistant Secretary of Defense Arthur L. Money (Money Memorandum) clarifying the application of Guideline C, Foreign Preference, to cases involving an applicant's possession or use of a foreign passport.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. 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. 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. *See Egan*, 484 U.S. at 531. 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. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. 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.

CONCLUSIONS

Guideline B - Foreign Influence

In the SOR, DOHA alleged, under Guideline B of the Directive, that Applicant has five sisters, three brothers, a sister-in-law, and a cousin who are citizens and residents of Iraq (¶ 1.a.) and that he sends his sister and sister-in-law in Iraq approximately \$500.00 twice a year in financial assistance (¶ 1.b.).

A Guideline B security concern exists when an individual seeking clearance is bound by ties of affection, influence, or obligation to immediate family, close friends, or professional associates in a foreign country, or to persons in the United States whose first loyalties are to a foreign country. A person who places a high value on family obligations or fidelity to relationships in another country may be vulnerable to duress by agents from that country engaged in terrorism or other criminal activity. The more faithful an individual is to family ties and obligations, the more likely the chance that the ties might be exploited to the detriment of the United States.

Applicant's case requires the recognition that the government of Iraq, while newly democratic, is fragile and its security is susceptible to attack by hostile and destructive elements who target U.S. security interests. U.S. citizens with immediate family members who are citizens or residents of Iraq could be vulnerable to coercion, exploitation, or pressure.

Applicant admits his five sisters, three brothers, sister-in-law, and cousin are citizens and residents of Iraq. His admission raises a security concern under Disqualifying Condition (DC) E2.A2.1.2.1. of Guideline B. Applicant is bound by ties of affection or obligation to his siblings, sister-in-law, and cousin in Iraq. He communicates with some of his brothers in Iraq every two months, and he communicates with his cousin in Iraq two or three times a month. While

he has not communicated with some of his sisters for many years, he has, in the recent past, helped his widowed sister and sister-in-law financially by sending them \$500.00 approximately twice a year. The fact that Applicant has ties of affection and obligation to immediate family members who are Iraqi citizens and who reside in Iraq could make Applicant vulnerable to coercion, exploitation, or pressure by a terrorist or criminal groups hostile to the U.S.

An applicant may mitigate foreign influence security concerns by demonstrating that foreign associates are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force an applicant to choose between loyalty to the foreign associates and loyalty to the United States. MC E2.A2.1.3.1. While the evidence does not establish that Applicant's family members in Iraq are agents of a foreign power, they are citizens of an emerging democracy frequently beset by hostile groups with interests antithetical to the United States, and they could be exploited by these groups in a way that could force Applicant to choose between loyalty to them and the United States. (ISCR Case No. 02-13595, at 4-5 (App. Bd. May 10, 2005)) Accordingly, MC E2.A2.1.3.1 does not apply to Applicant's case.

An applicant may also mitigate foreign influence security concerns if he shows his contacts and correspondence with foreign citizens are casual and infrequent. C E2.A2.1.3.3. Applicant's relationships with his brothers, his widowed sister and sister-in-law, and his cousin the cardiologist, all of whom are citizens and residents of Iraq, are based on ties of familial affection or obligation. He has communicated with them regularly and frequently. While he no longer sends his widowed female relatives in Iraq money for their support, he supplied them with money until approximately 2004, when he was assured their financial needs were being met by the Occupation Authority and his assistance was, therefore, not necessary. Accordingly, mitigating condition E2.A2.1.3.3. does not apply to Applicant's relationships with his close family members in Iraq.

Nothing in Applicant's testimony suggested he was not a loyal U.S. citizen. However, he was unable to put forward evidence that could mitigate the security concerns discussed herein and demonstrate that he would not be vulnerable to foreign influence that would result in the compromise of classified information. Accordingly, the allegations in subparagraph 1..a. and 1.b. of the SOR are concluded against the Applicant.

Guideline E - Personal Conduct

In the SOR, DOHA alleged Applicant raised concerns under Guideline E, Personal Conduct, when he executed signed, sworn statements in September 1996 and April 2003 which falsified material facts regarding his arrest in 1996 for solicitation of prostitution. DOHA further alleged that in his 1996 and 2003 signed, sworn statements to investigators of the Department of Defense, he stated he had picked up a hitchhiker, realized she was a prostitute, and told her to get out of his car, when, in truth, he drove the woman to the back of a building and asked how much a sexual act would cost. (¶¶ 2.a. and 2.b.) In his response to the SOR, Applicant denied the allegations. In his testimony, he admitted his lack of candor and falsification of material facts in reporting the event in his signed, sworn statements of 1996 and 2003. (Tr. 92-94.)

Guideline E conduct, which involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations, could indicate an applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

With respect to the Guideline E conduct alleged in the SOR, the Government has established its case. Applicant's deliberate false statements to investigators in connection with a personal security or trustworthiness determination raise concerns under DC E2. A5.1.2.3. In two signed sworn statements to authorized investigators of the Department of Defense, dated September 9, 1996 and April 30, 2003, Applicant deliberately omitted material facts related to his arrest in 1996 for soliciting prostitution. Applicant's concealment of information he considered embarrassing or professionally damaging could make him vulnerable to coercion and blackmail. DC E2.A5.1.2.4. His conduct raises additional concerns under DC E2.A5.1.2.5. because it suggests a pattern of dishonesty or rule violation. Applicant's reticence to reveal the truth about his conduct suggests that, under some circumstances, he may put his interests before those of the Government.

Mitigating condition (MC) E2.A5.1.3.1 does not apply to the facts of this case: the information Applicant withheld is pertinent to a determination of his judgment, trustworthiness, and reliability. Only one other mitigating condition under Guideline E might be applicable to the instant case. The security concern raised by Applicant's disqualifying conduct could be mitigated if the falsification was an isolated incident, was not recent, and if the Applicant subsequently provided the correct information voluntarily. MC E.2.A.5.1.3.2. Applicant did not supply the correct information voluntarily but only after having been questioned repeatedly. His falsifications were multiple and occurred recently. Accordingly, MC E.2.A.6.1.3.2. does not apply to the facts of Applicant's case. The Guideline E allegations in the SOR are concluded against the Applicant.

Guideline J - Criminal Conduct

In the SOR, DOHA alleged Applicant's deliberate material falsifications to conceal unfavorable information about his arrest for soliciting prostitution in certified, signed statements made to authorized investigators on September 10, 1996 and April 30, 2003, constituted a violation of Federal law under section 1001 of Title 18, United States Code. (¶ 3.a.)

Applicant admitted making knowing and willful false statements in his signed, sworn statements of September 10, 1996 and April 30, 2003, which he signed and certified as "correct and true as written."

When Applicant provided his two sworn written statements to Department of Defense special agents, and he signed his name below the following statement, which reads, in pertinent part, as follows:

I certify that the following statement is true, complete and accurate to the best of my knowledge and belief and is made in good faith. I understand that a knowing and willful false statement can be punished by fine or imprisonment or both. (See U.S. Code, Title 18, Section 1001.)

Under section Title 18, Section 1001, of the United States Code, it is a felony crime to knowingly make a materially false, fictitious, or fraudulent statement to a department or agency of the Federal government. Applicant admitted preparing and signing two written statements to lawful investigators in which he deliberately concealed unfavorable information about his arrest in 1996 for soliciting prostitution.

Applicant's admitted criminal conduct raises security concerns under Disqualifying Conditions (DC) E2.A10.1.2.1 and E2.A10.1.2.2 of Guideline J. His history or pattern of criminal activity raises doubts about his judgment, reliability and trustworthiness. ¶ E2.A10.1.1. A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. Where the facts proven by the Government or admitted by the applicant raise doubts about the applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nevertheless security worthy.

Applicant's falsifications of his signed, sworn statements occurred in 1996 and 2003. Applicant's 2003 falsification was recent. The two falsifications were not isolated events but instead demonstrated a pattern of criminal conduct. Thus, neither Mitigating Condition (MC) E2.A10.1.3.1. nor MC E2.A10.1.3.2 of Guideline J applies to Applicant's Guideline J conduct. Additionally, no other mitigating conditions under Guideline J are applicable to the facts of Applicant's case. Accordingly, the Guideline J allegations in the SOR are concluded against the Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Paragraph 3. Guideline J: AGAINST APPLICANT

Subparagraph 3.a.: Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Joan Caton Anthony

Administrative Judge

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