

KEYWORD: Foreign Influence

DIGEST: Applicant's mother-in-law and father-in-law are Iraqi citizens as is his wife's aunt, who still lives there. His wife's parents have permanent resident alien status with a home of record in the United States. Before the U.S. invasion in 2003, her parents returned to Iraq periodically for medical care they could not receive in the U.S. because of their immigration status. They returned to Iraq most recently in June 2004, but now live in the U.S. and do not plan to return to Iraq. Applicant has little direct contact with any of his wife's relatives. He has mitigated the resulting foreign influence concerns. Clearance is granted.

CASENO: 04-00347.h1

DATE: 01/06/2005

DATE: January 6, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-00347

ISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esquire, Department Counsel

FOR APPLICANT

SYNOPSIS

Applicant's mother-in-law and father-in-law are Iraqi citizens as is his wife's aunt, who still lives there. His wife's parents have permanent resident alien status with a home of record in the United States. Before the U.S. invasion in 2003, her parents returned to Iraq periodically for medical care they could not receive in the U.S. because of their immigration status. They returned to Iraq most recently in June 2004, but now live in the U.S. and do not plan to return to Iraq. Applicant has little direct contact with any of his wife's relatives. He has mitigated the resulting foreign influence 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 March 18, 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).

On March 25, 2004, Applicant answered the SOR (Answer) and requested a hearing. This case was originally assigned to another 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 seven exhibits (GE 1 - 7) in support of the SOR.⁽²⁾ Applicant, through counsel, submitted two exhibits (AE A and B) and the testimony of four⁽³⁾ witnesses, including the Applicant. DOHA received the hearing transcript (Tr.) on September 8, 2004.

FINDINGS OF FACT

Applicant has admitted the allegations in the SOR. His admissions are incorporated herein as facts. After a thorough review of the pleadings, testimony, and exhibits, I make the following additional findings of fact:

Applicant is a 35-year-old native-born American citizen. Along with his wife, a naturalized U.S. citizen originally from Iraq, he owns a small information technology company doing business with the Department of Defense. Applicant's wife is Iraqi by birth but was naturalized in 1997, having come to the United States in 1991.

Applicant's wife'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 and became the Iraqi Petroleum Ministry, retiring in 1976. Applicant's mother is in her 70s and has serious health concerns as well.

Since receiving PRA status, Applicant's wife'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 their son's address in the United States as their home of record. The same address is listed on the father's U.S. driver's license. As of the hearing, Applicant's wife'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 has little or no direct contact with his wife's parents. He described his relationship with his in-laws as informal and does not keep abreast of their whereabouts or circumstances. He is unaware of any ongoing contacts between his wife's family and any Iraqi or other foreign government.

When Applicant's wife's 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 has lived his entire life in the United States and does not appear to have any contacts or financial interests abroad. He is described by personal and business references as an accomplished and honest business man, a hard worker, and a dedicated, trustworthy member of his community.

POLICIES

The Directive sets forth adjudicative guidelines⁽⁴⁾ 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).

BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽⁵⁾ 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.⁽⁶⁾

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.⁽⁷⁾

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. ⁽⁸⁾ Ties of affection under this guideline may also include in-laws. Here, the concern is focused on Applicant's ties of affection to his wife's parents who are still citizens of Iraq.

Department Counsel has presented sufficient evidence to establish a *prima facie* case for disqualification under Guideline B. The Applicant has ties through his wife to citizens of 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) Further, Applicant's wife's parents were each employed by the Iraqi government at one time (SOR 1.d and 1.e). Guideline B disqualifying condition (DC) 1 ⁽⁹⁾ and DC 3 ⁽¹⁰⁾ apply here.

In response, Applicant has shown his in-laws 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 his wife's parents' poor health and inability to access affordable health care in the U.S. It is also reasonable 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 is there any indication they maintained any contacts with that government after they retired. Lastly, Applicant has very minimal contact with his in-laws and does not consider them to be close relations.

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 wife's parents' decision to live in the U.S. would eliminate the likelihood, already remote, that his in-laws would be targeted in order to exert pressure on Applicant through his wife. Further, any contacts her parents may have had with the former Iraqi government ceased at least 22 years ago. Guideline B mitigating condition (MC) 1 ⁽¹¹⁾ and MC 3 ⁽¹²⁾ apply. On balance, I conclude the available information shows Applicant has met his burden in response to the government's case and has mitigated the security concerns under Guideline B.

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⁽¹³⁾ 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

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 2 through 6 were submitted for informational purposes only and I agreed to take official notice of them. GE 7 is simply a cover sheet identifying the other six exhibits.
3. This hearing was held the same day as the hearing in ISCR Case 03-19437, the subject of which was Applicant's wife. By agreement of the parties, the testimony of two witnesses in that case is submitted in support of Applicant in the present case. I have included in the case file a copy of the transcript of their testimony as Administrative Judge's Exhibit (AJ Ex.) 1.
4. Directive, Enclosure 2.
5. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
6. *See Egan*, 484 U.S. at 528, 531.
7. *See Egan*; Directive E2.2.2.
8. Directive, E2.A2.1.1.
9. 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;
10. Directive, E2.A2.1.2.3. Relatives, cohabitants, or associates who are connected with any foreign government;
11. 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;
12. Directive, E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent;
13. Directive, E2.2.3.