

KEYWORD: Foreign Influence

DIGEST: Applicant was born in Iraq, became a U.S. citizen, and is now a well-respected and trusted linguist working for a defense contractor in Iraq. Three of his six sisters are citizens and residents of Iraq. The record does contain any information about his sisters' families, occupations, or their political, economic, and social ties in Iraq. The security concern based on foreign influence is not mitigated. Clearance is denied.

CASENO: 04-02264.h1

DATE: 01/17/2006

DATE: January 17, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-02264

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was born in Iraq, became a U.S. citizen, and is now a well-respected and trusted linguist working for a defense contractor in Iraq. Three of his six sisters are citizens and residents of Iraq. The record does contain any information about his sisters' families, occupations, or their political, economic, and social ties in Iraq. The security concern based on foreign influence is not mitigated. Clearance is denied.

STATEMENT OF THE CASE

On May 26, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to Applicant. This action was taken under Executive Order 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). The SOR alleges security concerns under Guideline B (Foreign Influence), based on the Iraqi citizenship of his spouse and her family (§§ 1.a. and 1.c.), the Iraqi citizenship and residence of his three sisters (§ 1.b.), and Applicant's travel to Iraq in 2001 to visit his family (§ 1.d.).

Applicant answered the SOR in writing on June 12, 2005, and elected to have the case decided on the written record in lieu of a hearing. Applicant admitted the allegations in the SOR but explained he and his spouse were divorced on July 7, 2005. Department Counsel submitted the Government's written case on August 2, 2005. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on September 10, 2005, and responded on September 28, 2005. His response was received on October 24, 2005. The case was assigned to me on November 28, 2005.

FINDINGS OF FACT

Based on the entire record, I make the following findings of fact:

Applicant is a 46-year-old linguist for a defense contractor. He has been working in Iraq with the U.S. forces since 2003.

Applicant is highly respected by his military and civilian supervisors. One military supervisor, a U.S. Air Force lieutenant colonel, regards him as "an invaluable asset," based on his linguistic skills, professionalism, sense of duty, and dedication to the mission. Another military supervisor, a U.S. Army lieutenant colonel, cited his bravery, hard work, selflessness, language skills, "keen personal insights" and "cultural acumen." A third military supervisor, an Air Force captain, described him as one of his "most versatile linguists," a "production powerhouse," and "a meticulous worker." The captain stated, "I wish I had a dozen more exemplary workers like [Applicant]. A civilian supervisor praised Applicant's knowledge, insights, skills, and professional attitude. Applicant has received several certificates of appreciation for his work in Iraq.

Applicant was born in Iraq. He served in the Iraqi Army from November 1977 to February 1988. He immigrated to the U.S. in 1990, and became a naturalized U.S. citizen in 1998.

Applicant's parents are deceased. He has six sisters. Two are citizens and residents of the U.S., one is a citizen and resident of Germany, and three are citizens and residents of Iraq. Before coming to Iraq, Applicant contacted his sisters every four or five months. Since arriving in Iraq, he has not contacted his sisters because of local rules forbidding him from leaving his base or contacting anyone in the local area under any circumstances. There is no evidence in the record regarding his sisters' families, occupations, or their political, economic, and social ties in Iraq.

Applicant traveled to Iraq in December 2001 to plan his marriage and visit his family. He stayed in Iraq for about three weeks.

Applicant was married to an Iraqi citizen in July 2002, and his spouse became a permanent resident of the U.S. Her family remained in Iraq. Applicant and his spouse were divorced on July 7, 2005. Applicant has no contact with his ex-wife or her family.

Iraq is a "transitional democracy," in the process of establishing an effective democratic government.⁽¹⁾ While the Iraqi government is friendly to and supported by the U.S., the country remains very dangerous, with both internal and external terrorist forces and criminal elements targeting Iraqi government facilities and personnel, Iraqi private citizens, and U.S. forces.⁽²⁾

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 with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified. 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 Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶¶ 6.3.1 through 6.3.6.

In evaluating an applicant's conduct, an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant'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. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

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 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 which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

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 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

A security risk may exist when an applicant's immediate family, or other persons to whom he or she may be bound by affection, influence, or obligation, are not citizens of the U.S. or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Directive ¶ E2.A2.1.1. A disqualifying condition (DC 1) may arise when "[a]n immediate family member [spouse, father, mother, sons, daughters, brothers, sisters], 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." Directive ¶ E2.A2.1.2.1. The totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003).

Applicant divorced his Iraqi wife and has no contact with her or her family. Thus, he has refuted the allegations in SOR ¶¶ 1.a. and 1.c. However, DC 1 is established because three of Applicant's sisters are citizens and residents of Iraq.

Since the government produced substantial evidence to establish DC 1, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. In cases where an applicant has immediate family members who are citizens or residents of a foreign country or who are connected with a foreign government, a mitigating condition (MC 1) may apply if "the immediate family members, 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." Directive ¶ E2A2.1.3.1.

Notwithstanding the facially disjunctive language of MC 1 ("agents of a foreign power **or** in a position to be exploited"), it requires proof "that an applicant's family members, cohabitant, or associates in question are (a) not agents of a foreign

power, **and** (b) not in a position to be exploited by a foreign power in a way that could force the applicant to chose between the person(s) involved and the United States." ISCR Case No. 02-14995 at 5 (App. Bd. Jul. 26, 2004); *see* 50 U.S.C. § 1801(b) (defining "agent of a foreign power").

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. *See* ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Nevertheless, the nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S.

Applicant presented no evidence concerning his sisters' families, occupations, or their political, economic, and social ties in Iraq. Therefore, it is not possible to assess the vulnerability of Applicant's sisters to coercion, persuasion, or duress based on the record in this case. Applicant has the burden of proving a mitigating condition, and the burden of disproving it is never shifted to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). I conclude he has not carried his burden of establishing MC 1.

A mitigating condition (MC 3) may apply if "[c]ontact and correspondence with foreign citizens are casual and infrequent." Directive ¶ E2.A2.1.3.3. There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002). Applicant had regular contacts with his sisters until his deployment to Iraq. Applicant's travel to Iraq in 2001 (SOR ¶ 1.d.) demonstrated his ties of affection to his family in Iraq. The evidence reflects he temporarily ceased contact with his sisters because of local rules forbidding it while he is in Iraq. His temporary cessation of contact under these circumstances does not establish a mitigating condition.

There is no doubt Applicant is a loyal, brave, talented, and dedicated U.S. citizen. However, the record does not establish he is free from conflicting allegiances that could require him to make a choice between loyalty to his sisters and the U.S. His sisters live in an often-lawless, dangerous country. After considering the disqualifying condition established by the evidence and the absence of mitigating conditions, and evaluating the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concern based on foreign influence.

FORMAL FINDINGS

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

Paragraph 1. Guideline B (Foreign Influence): AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: 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.

LeRoy F. Foreman

Administrative Judge

1. See U.S. Dept. Of State, *Background Note: Iraq* 1-2, 4-5 (Aug. 2005), available on the internet at www.state.gov.
2. U.S. Dept. Of State, *Consular Information Sheet, Iraq* 1-2 (Aug. 2, 2005), enclosed in the FORM as Government Exhibit 6; U.S. Dept. Of State, *Travel Warning, Iraq* (Jun. 28, 2005), enclosed as Government Exhibit 7.