

KEYWORD: Foreign Influence

DIGEST: Applicant is 42 years old and has worked for a federal contractor since 2005. He became a naturalized U.S. citizen in 2000. He was born in Iraq and fled to Kuwait after serving a jail term for refusing to serve in the Iraqi army. From there he was a refugee in Saudi Arabia before immigrating to the U.S. His wife is Iraqi-born and has completed the required paperwork to be sworn in as a U.S. citizen. Their three children are all U.S. citizens. Applicant's mother, eight siblings, and mother-in-law are citizens and residents of Iraq. He maintains regular and consistent contact with his mother and at least one brother, and he also sends them monthly financial support. His wife maintains regular contact with her mother. Despite his loyalty to the U.S. Applicant is unable to mitigate the security concerns raised under Guideline B. Clearance is denied.

CASENO: 04-05835.h1

DATE: 05/25/2006

DATE: May 25, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-05835

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 42 years old and has worked for a federal contractor since 2005. He became a naturalized U.S. citizen in 2000. He was born in Iraq and fled to Kuwait after serving a jail term for refusing to serve in the Iraqi army. From there he was a refugee in Saudi Arabia before immigrating to the U.S. His wife is Iraqi-born and has completed the required paperwork to be sworn in as a U.S. citizen. Their three children are all U.S. citizens. Applicant's mother, eight siblings, and mother-in-law are citizens and residents of Iraq. He maintains regular and consistent contact with his mother and at least one brother, and he also sends them monthly financial support. His wife maintains regular contact with her mother. Despite his loyalty to the U.S. Applicant is unable to mitigate the security concerns raised under Guideline B. Clearance is denied.

STATEMENT OF THE CASE

On May 31, 2005, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) stating it was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline B (foreign influence).

In a sworn statement, dated September 16, 2005, Applicant responded to the SOR allegations and requested a hearing. In his SOR response, Applicant admitted all of the allegations under Guidelines B. The case was assigned to me on March 13, 2006. A notice of hearing was originally issued on April 4, 2006, scheduling the hearing for April 13, 2006. Due to scheduling issues, the case was rescheduled for May 3, 2006, and notice was provided on April 13, 2006. The hearing was conducted as scheduled. The government submitted eight exhibits, which were marked as Government Exhibits (GE) 1-8. The exhibits were admitted into the record without objection. Applicant testified on his own behalf, and submitted three exhibits which were marked as Applicant's Exhibits A-C. The exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on May 19, 2006.

PROCEDURAL MATTERS

Department Counsel moved to amend SOR ¶ 1.c to read "Your mother-in-law is a citizen and resident of Iraq." Applicant did not object and the motion was granted.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 42 years old, married, with three young children, and has worked for a federal contractor since 2005. Applicant was born in Iraq. After he completed college in 1989, he refused to join the Iraqi army and was put in jail for a month. Upon his release, he escaped to Kuwait because he feared for his safety. He remained there from 1989 to 1991. He then left and went to Saudi Arabia as a refugee and remained in that country from 1991 to 1994.⁽²⁾ In 1994 he immigrated to the United States and became a naturalized citizen in 2000.⁽³⁾

In 1998, Applicant traveled to Syria to meet his future wife, who traveled there from Iraq, and arranged the necessary paperwork for their marriage.⁽⁴⁾ His future wife returned to Iraq upon the completion of the paperwork. In 2000, after Applicant had become a U.S. citizen and was able to travel on a U.S. passport, he returned to Syria and met his future wife again. They then traveled to Jordan where they were married and completed the requisite paperwork at the U.S. embassy for her to travel to the U.S.⁽⁵⁾ Applicant returned to the U.S. and she joined him in the U.S. two months later. She is a permanent resident alien and has completed all the necessary requirements to become a U.S. citizen and is only waiting to be advised of the date of the swearing-in ceremony. Applicant's three children were all born in the U.S. and are U.S. citizens.

Applicant's mother, three brothers, five sisters, and mother-in-law are citizens and residents of Iraq. In 2004, he went to Iraq and visited his mother and one brother who lives with their mother.⁽⁶⁾ His brother suffered a debilitating injury during the Iran-Iraq war and is unable to work. Applicant provides between \$200-300 a month for support to his brother and mother.⁽⁷⁾ He also visited three of his five sisters in 2004. He has had no other contact with his siblings. The last time he saw his other siblings was approximately 5-6 years ago. He does not know what types of jobs they have or anything about their lives. He speaks with his mother about once a month.⁽⁸⁾ His wife's mother is also a citizen and resident of Iraq and she speaks with her mother about once a month or once every two to three months. None of Applicant's family members have ties with terrorist organizations or the government. All of Applicant's assets are in the U.S. He has no intention of returning to Iraq to live permanently. He would like to buy a house in Iraq for investment, but does not have enough money.⁽⁹⁾

The Iraqi government is a transitional democracy following elections held in January 2005.⁽¹⁰⁾ It is still a developing democracy and dealing with many issues. The risks of terrorism directed against citizens of the United States in Iraq and U.S. interests are extremely high.⁽¹¹⁾ "Remnants of the former Baath regime, transnational terrorist, and criminal elements remain active throughout Iraq."⁽¹²⁾ The security environment across the country is volatile, dangerous, and unpredictable.⁽¹³⁾ The Department of State strongly warns U.S. citizens against traveling to Iraq.⁽¹⁴⁾ U.S. citizens have been targeted, kidnaped, used for extortion and murdered by terrorists in Iraq.⁽¹⁵⁾ Attacks against civilians have included humanitarian workers, and there continue to be planned and random killings as well as extortions.⁽¹⁶⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽¹⁷⁾ The government has the burden of proving controverted facts.⁽¹⁸⁾ The burden of proof is something less than a preponderance of evidence.⁽¹⁹⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him.⁽²⁰⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽²¹⁾

No one has a right to a security clearance⁽²²⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽²³⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽²⁴⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽²⁵⁾ 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.

Based upon consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline B-Foreign Influence is a concern because 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 obligations 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 or financial interest in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline B.

Based on all the evidence, Foreign Influence Disqualifying Condition (FI DC) 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*) and FI DC E2.A2.1.2.2 (*Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists*) apply. Applicant's mother and eight siblings are immediate family members who all are citizens of and reside in Iraq. Applicant's wife's mother is a citizen and resident of Iraq. There is a rebuttable presumption that a person has close ties of affection for, or obligation to, the immediate family members of the person's spouse. ⁽²⁶⁾ An immediate family includes spouse, father, mother, sons, daughters, brothers, and sisters. ⁽²⁷⁾ Applicant sends money to his mother and brother, has some contact with his siblings, and his wife keeps in contact with her mother on a regular basis. There is potential for foreign influence due to Applicant's family ties.

I have considered all the mitigating conditions and especially considered Foreign Influence Mitigating Condition (FI MC) 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*) and FI MC E2.A2.1.3.2 (*Contacts and correspondence with foreign citizens are casual and infrequent*), and I conclude they do not apply.

Applicant's family and in-law are not agents of a foreign power since there was no information that they are engaged in intelligence work, but rather work in the private sector. (28) The question remains whether the relatives are in a position to be exploited by a foreign power in a way that could force Applicant to choose between loyalty to his family and mother-in-law vice the United States. The disqualifying condition requires that a foreign power would exploit its citizens or residents in such a way as to have Applicant act adversely to the interests of the United States. A factor to consider, while not determinative, is the character of the foreign power and entities within the foreign country. This review is not limited to countries that are hostile to the United States. Friendly countries may have profound disagreements with the United States or have engaged in espionage against the United States especially in economic, scientific, military, and technical fields. A friendly relationship is not determinative, but it may make it less likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that country. Although the new government of Iraq is still in its infancy, there are serious terrorist activities, factions, and organizations in that country that are committed to its ruin. The risks against Americans or anyone with ties to Americans is very serious and very real. The kidnaping of people who in anyway could benefit the extortionists is a common occurrence, and, despite the loyalty of the person, it is a risk too great to overcome under the circumstances. FI MC E2.A2.1.3.1 does not apply.

Applicant maintains more than casual and infrequent contact with at least his mother and his brother and lesser contact with his other siblings. He speaks with his mother regularly and provides monthly support to her and his disabled brother. Applicant's wife speaks regularly with her mother in Iraq. Applicant's and his wife's ties to their families are more than casual and infrequent. FI MC E2.A2.1.3.1 does not apply.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of his acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered Applicant as a whole person, and I find he failed to mitigate the security concerns raised by the government. Applicant is a loyal American who sought a better life in the U.S. and opposed the former Iraqi government. This decision is not a comment on his loyalty, but rather it is a risk assessment based on the ties Applicant has in Iraq and the terrorist threats against those who support the shift in government. Despite Applicant's devotion to the U.S., he is also a loyal son and brother, which creates a vulnerability and risk. Therefore, I am persuaded by the totality of the evidence in this case that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline B is decided against Applicant.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1 Foreign Influence (Guideline B) AGAINST APPLICANT

Subparagraph 1.a. For Applicant

Subparagraph 1.b. Against Applicant

Subparagraph 1.c. Against Applicant

Subparagraph 1.d. Against Applicant

Subparagraph 1.e. Against Applicant

DECISION

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

Carol G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Tr. 15.
3. Tr. 15, 29-30.
4. Tr. 15-18.
5. Tr. 18-19.
6. Tr. 23-27.
7. Tr. 28.
8. Tr. 36, 41.
9. Tr. 39.
10. U.S. Department of State Background Note: Iraq dated August 2005.
11. United States Department of State Travel Warning: Iraq, dated June 28, 2005.
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.*
17. ISCR Case No. 96-0277 at 2 (App. Bd. Jul 11, 1997).
18. ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
19. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
20. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
21. ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
22. *Egan*, 484 U.S. at 531.
23. *Id.*
24. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

25. Executive Order 10865 § 7.

26. ISCR Case No. 01-02452 (App. Bd. Nov. 21, 2002).

27. Directive E2.A2.1.3.1.

28. *See*, 50 U.S.C. secs. 435, 438, and 1801 (b), *See also*, ISCR Case No. 02-24254 (App. Bd. Jun. 29, 2004) for a broader definition of "agent of a foreign power."