

DATE: December 31, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-12650

## **DECISION OF ADMINISTRATIVE JUDGE**

**CAROL G. RICCIARDELLO**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Rita C. O'Brien, Esq., Department Counsel

#### **FOR APPLICANT**

Patrick Johnson, Esq.

### **SYNOPSIS**

Applicant is a 48-year-old naturalized citizen of the United States who has been employed as a linguist for a defense contractor since 2003. Applicant was born in Iraq and is of Kurdish ethnicity. He and his family fled to Iran in 1975, and he came to the United States in 1977. His family returned to Iraq in 1991. Applicant and his wife have strong family ties in Iraq and, despite his loyalty to his chosen country, he has not mitigated the security concerns raised under Guideline B, foreign influence. Clearance is denied.

### **STATEMENT OF THE CASE**

On July 25, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant Statements of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance.<sup>(1)</sup> The SOR, which is in essence the administrative complaints, alleged a security concern under Guideline B (foreign influence).

In a sworn statement, dated August 26, 2005, Applicant responded to the SOR allegations and requested a hearing. In his SOR response, Applicant admitted all of the allegations under Guideline B. The case was assigned to me on November 9, 2005. A notice of hearing was issued on November 9, 2005, scheduling the hearing for December 7, 2005. The hearing was conducted as scheduled. The government submitted seven exhibits that were marked as Government Exhibits (GE) 1-7. The exhibits were admitted into the record without objection. Applicant testified on his own behalf, and submitted two exhibits that were marked as Applicant's Exhibits A-B. The exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on December 22, 2005.

### **FINDINGS OF FACT**

Applicant is 48 years old and was born in Iraq. He is of Kurdish ethnicity and lived in Iraq until 1975, when his family fled because they were persecuted and terrorized by the Iraqi regime. His family and he were granted refugee status in Iran. In 1977, he left Iran and came to the United States where he attended college. In 1991, after the Gulf War,

Applicant's family returned to the Kurdish sector of Iraq. Applicant's father and mother are residents and citizens of Iraq. Applicant has three brothers. All three currently reside in Iraq. One brother is a citizen of Canada, one is a United States citizen and the third is an Iraqi citizen. Two of Applicant's brothers have wives and children, and the third is single. Applicant's brother who is also a naturalized U.S. citizen lives in Iraq, due to his business venture, but his family lives in the United States. Applicant became a naturalized citizen of the United States in 1993.

Applicant returned to Iran in 1985 to visit his family. While there he met and later married his wife, also an Iraqi refugee. Applicant's wife became a naturalized citizen of the United States in

1996. She is also of Kurdish ethnicity. Applicant's mother-in-law is a citizen and resident of Iraq. His father-in-law fought with the Kurdish Democratic Party against the Iraqi regime and was killed. Applicant provided about \$1,000.00 a year in support for his mother-in-law for approximately 4-5 years. For approximately ten years, Applicant provided up to \$2,000.00 a year, but regularly \$1,000.00 a year in support for his parents. He no longer provides them money, because his brothers now live in Iraq and support them. Applicant's wife has six brothers and three sisters. It is unclear where they are all located, but at least two sisters and two brothers are citizens and residents of Iraq.

Applicant's three brothers started their own business in the Kurdish province and contract with the United States government to provide supplies to the forces stationed there. Applicant has a joint bank account with his Canadian brother that was opened for convenience when his brother was applying for a job with a U.S. contractor. The job never materialized, but the bank account remains open. Applicant visited his family in Iraq in 1995, in 1997 when he traveled through Turkey, and in 2005. Applicant's wife and children visited the families in Iraq in 2004. Applicant keeps in contact with his parents and his brothers. He talks to his parents monthly and to his brothers in varying degrees. Applicant's wife speaks regularly with her mother and some of her siblings.

In 2003, when the United States went to war with Iraq, Applicant quit his job when he learned the United States government was in need of Iraqi linguists. He volunteered and was hired by a defense contractor that provided linguists to the United States government and military. Applicant has worked for the defense contractor since 2003 and was granted an interim secret clearance. Applicant is a loyal American who is committed to the United States mission in Iraq. Applicant and his family hold a great animosity towards the Iraqi regime that was controlled by Sadaam Hussein. This animosity stems from the atrocities that were committed by the regime against Applicant's family and the Kurdish people. There is strong Kurdish support for the American forces because of this history. Applicant's father and one brother were members of the Kurdish Democratic Party, a military organization that fought against the Iraqi regime. Neither participate any longer.

The Iraqi interim government assumed sovereign governing authority in June 2004.<sup>(2)</sup> The risk of terrorism directed against citizens of the United States in Iraq and its interests are extremely high.<sup>(3)</sup> "Remnants of the former Baath regime, transnational terrorist, and criminal elements remain active throughout Iraq."<sup>(4)</sup> The security environment across the country is volatile, dangerous, and unpredictable.<sup>(5)</sup> The Department of State strongly warns U.S. citizens against traveling to Iraq.<sup>(6)</sup> U.S. citizens have been targeted, kidnaped, used for extortion and murdered by terrorist in Iraq.<sup>(7)</sup>

## 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. Considering the evidence as a whole, Guideline B, foreign influence, with its respective DC and MC, applies in this case. 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.<sup>(8)</sup> The government has the burden of proving controverted facts.<sup>(9)</sup> The burden of proof is something less than a preponderance of evidence.<sup>(10)</sup> 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.<sup>(11)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(12)</sup>

No one has a right to a security clearance<sup>(13)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(14)</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>(15)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>(16)</sup> 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.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline 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 parents and three brothers are immediate family members who all reside in Iraq. His parents and one brother are citizens of Iraq. Applicant's wife's mother and some of her siblings are citizens and residents 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.<sup>(17)</sup> An immediate family includes spouse, father, mother, sons, daughters, brothers, and sisters.<sup>(18)</sup> Applicant sends money to his mother-in-law and his wife keeps in contact with her and some of her siblings. 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 conclude they do not apply.

Applicant's family and in-laws 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. (19) 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 in-laws 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 that 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 close contact with his family. He speaks to them regularly. Both he and his wife have traveled to Iraq to visit their families. Applicant has provided financial support to both families. Applicant 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 their 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 the whole person and I find Applicant failed to mitigate the security concerns. Applicant is a loyal American, committed to the success of the new Iraqi government. He has volunteered his services to help the United States in Iraq. This decision is not a comment on his loyalty, but rather it is a risk assessment based on the strong and numerous ties Applicant has in Iraq and the terrorist threats against those who support the shift in government. 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 THE APPLICANT

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. Against the Applicant

Subparagraph 1.f. Against the Applicant

Subparagraph 1.g. Against the Applicant

Subparagraph 1.h. Against the 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. United States Department of State Consular Information Sheet: Iraq, dated October 16, 2005.
3. *Id.*
4. *Id.*
5. *Id.*
6. United States Department of State Travel Warning: Iraq, dated October 16, 2005.
7. *Id.*
8. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
9. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.
10. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
11. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, ¶ E3.1.15.
12. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15.
13. *Egan*, 484 U.S. at 531.
14. *Id.*
15. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
16. Executive Order 10865 § 7.
17. ISCR Case No. 01-02452 (App. Bd. Nov. 21, 2002).
18. Directive E2.A2.1.3.1.
19. *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."