

KEYWORD: Foreign Influence; Personal Conduct

DIGEST: Applicant has numerous relatives who are citizens and residents of Iraq. In December 2004, while serving as an interpreter for the U.S. Army in Iraq, Applicant disobeyed a directive from his employer that prohibited him from leaving a secure military facility. Clearance is denied.

CASENO: 05-02022.h1

DATE: 03/28/2006

DATE: March 28, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-02022

**DECISION OF ADMINISTRATIVE JUDGE**

**HENRY LAZZARO**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant has numerous relatives who are citizens and residents of Iraq. In December 2004, while serving as an interpreter for the U.S. Army in Iraq, Applicant disobeyed a directive from his employer that prohibited him from leaving a secure military facility. Clearance is denied.

### **STATEMENT OF THE CASE**

On August 29, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. <sup>(1)</sup> The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline B (foreign influence), and Guideline E (personal conduct). Applicant submitted a response to the SOR that was received by DOHA on September 30, 2005, requested a hearing, and admitted all allegations.

The case was assigned to me on December 21, 2005. A notice of hearing was issued on January 4, 2006, scheduling the hearing for January 19, 2006. <sup>(2)</sup> The hearing was conducted as scheduled. The government submitted four documentary exhibits that were marked as Government Exhibits (GE) 1-4, and admitted into the record without objection. Applicant testified and submitted three documentary exhibits that were marked as Applicant's Exhibits (AE) 1-3, and admitted into the record without objection. The transcript was received on January 27, 2006.

### **FINDINGS OF FACT**

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

Applicant is a 49-year-old man who was employed by a defense contractor as a linguist from January 2003 until he was terminated in December 2004. He has since obtained employment with another defense contractor as a linguist for which he requires a security clearance. Applicant was previously employed as a cab driver from February 1997 until January 2003, and as a retail store manager from January 1993 until February 1997.

Applicant is of Kurdish descent, and was born and raised in Iraq. He went as a refugee to Iran in 1975 to escape the violence that was directed against the Kurds in Iraq. He resided in refugee camps within Iran until he was permitted to immigrate to the United States in 1977. He obtained a general educational development (GED) certificate in the U.S., subsequently attended about two years of college, and has resided continuously in the U.S. since immigrating here in 1977. Applicant became a naturalized U.S. citizen on March 8, 1991.

Applicant's parents, four sisters, one brother and many extended family members are citizens and residents of Iraq. He has one additional sister who is a citizen and resident of the U.S. After becoming a U.S. citizen, Applicant returned to Iraq in 1991 for a visit of several months duration. While in Iraq, he met and married an Iraqi citizen, who returned with him to the U.S. by way of Turkey. Applicant's wife became a naturalized U.S. citizen in December 2000. Applicant has three sons with his wife, ages 12, 10, and 9. Applicant's parents-in-law are also Kurdish citizens and residents of Iraq. Applicant converses with his Iraqi relatives every few months.

Applicant was employed by a civilian government contractor and served as a translator in Iraq for several U.S. Army units from January 2003 until he was terminated in December 2004. Applicant's termination occurred because he disobeyed a company directive that required all civilian employees to remain on a secure military facility during Ramadan. Applicant disobeyed the directive in order to visit with his elderly parents during Ramadan. Although he indicated in his answer to the SOR that he believed the prohibition on leaving the base was only an advisement and not mandatory, he admitted during his testimony that he was instructed by his Army supervisor that if he intended to leave he would have to obtain permission from the civilian manager which he did not do because he didn't want to talk to him. (Tr. p. 44)

## **POLICIES**

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the disqualifying conditions (DC) and mitigating conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. 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. Considering the evidence as a whole, Guideline B, pertaining to foreign influence, and Guideline E, pertaining to personal conduct, with their respective DC and MC, are most relevant in this case.

## **BURDEN OF PROOF**

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(3)</sup> The government has the burden of proving controverted facts.<sup>(4)</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence,<sup>(5)</sup> although the government is required to present substantial evidence to meet its burden of proof.<sup>(6)</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>(7)</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>(8)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(9)</sup>

No one has a right to a security clearance<sup>(10)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(11)</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.<sup>(12)</sup>

## CONCLUSIONS

**Foreign Influence.** 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 obligation 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 interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Applicant's parents, five siblings, parents-in-law, and many extended family members are citizens and residents of Iraq. He maintains contact with these relatives by either them calling him or him calling them every few months. Disqualifying Conditions (DC) 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 DC 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.*

Iraq is a country in turmoil with hostage taking and terrorist activity directed against Iraqi civilians, U.S. military forces, and foreign visitors. In that environment, Applicant's relatives, through no fault of Applicant or his relatives, are clearly in a position where they could be exploited in a way that could force him to choose between his loyalty to them and the United States. Applicant's decision to disobey a company directive to remain within a secure environment so that he could visit his parents in Iraq during Ramadan itself creates questions about his judgment, and uncertainty about what could be expected of him if he were forced to choose between his loyalty to his parents and the United States. I have considered all mitigating conditions under Guideline B, and none apply. Guideline B is decided against Applicant.

**Personal Conduct.** Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information.

Applicant deliberately violated a company directive that required him to remain within the secure environment of a military installation in Iraq during the Ramadan religious holiday. The directive was obviously issued for security reasons and to protect the persons covered by the directive, including Applicant, from the perceived increased threat that could be anticipated during the holiday. In choosing to violate the directive to satisfy his personal desires, Applicant placed himself, the classified information he had knowledge of, and possibly U.S. forces who might have to be dispatched in an attempted rescue effort at risk.

DC 1: *Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances*; and DC 4: *Personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress* . . . apply. I have considered all mitigating conditions under Guideline E, and none apply. Guideline E is decided against Applicant.

The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Having done so, I conclude that Applicant has failed to present sufficient evidence of refutation, extenuation, and mitigation to overcome the case against him.

### **FORMAL FINDINGS**

SOR ¶ 1-Guideline B: Against Applicant

Subparagraphs a-e: Against Applicant

SOR ¶ 2-Guideline E: Against Applicant

Subparagraph a: 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 or continue a security clearance for Applicant. Clearance is denied.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Applicant spoke with Department Counsel, agreed to the January 19, 2006 hearing date, and was given oral confirmation of that date by Department Counsel sometime prior to issuance of the formal notice of hearing.
3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
4. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
5. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
6. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
7. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
8. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
9. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
10. *Egan*, 484 U.S. at 528, 531.
11. *Id* at 531.
12. *Egan*, Executive Order 10865, and the Directive.