

DATE: September 23, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-02214

**DECISION OF ADMINISTRATIVE JUDGE**

**KATHRYN MOEN BRAEMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Nichole Noel, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant mitigated foreign influence security concerns over his family ties in Iraq; only two brothers and his wife's family remain citizens of Iraq and reside there. Applicant has strong ties to the U.S. and has demonstrated working as a translator for U.S. interests in Iraq on two assignments that he can and will put U.S. security interests ahead of his family ties. In his 2005 assignment in Iraq, he learned that both of his parents died, but he did not attend either of their funerals as his assignment would not permit it. Applicant's assurances that he would put U.S. interests over any Iraqi family ties are supported by his positive character and work assessments. Clearance is granted.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) <sup>(1)</sup> to the Applicant on April 12, 2005. The SOR detailed reasons why the Government could not find that it is clearly consistent with the national interest to grant him access to classified information. The SOR alleges specific concerns in paragraph 1 over foreign influence (Guideline B). Applicant replied to the SOR allegations in an Answer notarized and received on May 6, 2005, and requested a hearing.

After Department Counsel stated the case was ready to proceed on July 13, 2005, the case was assigned to me on July 19, 2005. On July 21, 2005, DOHA issued a Notice of Hearing and set this case to be heard on August 16, 2005, in a city near where Applicant lives and works. At the hearing the government presented two exhibits (Exhibits 1-2) which were admitted into evidence without objection. (TR 10-13) Department Counsel's request that administrative notice (AN) be taken of the information contained in Exhibits I -III was granted as Applicant did not object. (AN I-III, TR13-16) Applicant offered six exhibits (Exhibits A-F) and testified. As Department Counsel did not object, Exhibits A-F were admitted into evidence. (TR 18-21) The transcript (TR) was received on August 25, 2005.

**FINDINGS OF FACT**

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant, 38 years old, worked for defense contractor (Employer #1) in State #1 from April 2003 to 2004 with an interim Secret clearance. He was sent to Iraq to work as an interpreter to help recruit a new Iraqi Army. After he left Employer #1, he was self-employed until he went to work for Employer #2 in February 2005. He was again sent to Iraq on an interim clearance. When the SOR was issued in April 2005, his interim clearance<sup>(2)</sup> was withdrawn; and he returned to the U.S. in June 2005. He would like to return to work for Employer #2. (Exhibits 1, 2, TR 23-24; 36-37; 43-44; 47-48; 62-66)

Applicant was born in Iraq. While he lived in Iraq he worked in his parents' store. He had a B.S. degree for a university in Iraq. However, he never served in the military in Iraq and never voted there. (Exhibit 2 at 4) He left Iraq after the Gulf War with the U.S. military because of the war and the sanctions placed on Iraq. He lived and worked in State #2 in a factory; later he moved to State #3 and worked as a cab driver. In May 1999 he became a naturalized U.S. citizen in State #2. He moved to State #4 in October 2002. He is willing to renounce his Iraqi citizenship. (Exhibits 1, 2)

### **Foreign Influence**

His parents and two brothers remained in Iraq. After he came to the U.S. Applicant had no contact with his family; he did not send cards nor telephone them; he did not send them money. None of his relatives were associated with the Iraqi military. His father was a retired grocer and died in April 2005; Applicant did not attend the funeral because his assignment in Iraq would not permit him to leave the area where he was assigned. His step-mother was a homemaker who died in May 2005. Applicant's mother was a homemaker. When he first went to Iraq in 2003 he was assigned near where she lived and was able to see her weekly until he returned to the U.S. in 2004. However, when she died in February 2005, he only learned of her death through his wife in the U.S. who learned it from friends there. Applicant did not attend her funeral because his new assignment in Iraq would not permit it. His stepfather is deceased. Applicant has one brother who is a mechanic and another who is a construction worker. They have no ties to the government. In his 2005 assignment in Iraq, he did not even tell his family he was in Iraq because of security issues. (Exhibits 1, 2; TR 44-47; 49-53; 64-65; 67-68) He has not talked with his brothers since he returned to the U.S. (TR 58-59)

Applicant got a certificate to marry his wife in Jordan in July 1997, but he could not travel there to marry her until after he became a naturalized U.S. citizen in ay 1999. He had known his wife since childhood. They were married in Jordan, and then he and his wife returned to the U.S. together. His wife was born in Iraq and had also lived in Jordan. She has a permanent resident card and has applied for U.S. naturalization. He and his wife have children who were born in the U.S. (Exhibits 1, 2; Exhibit F; TR 54; 58;60-62; 66) His wife's mother in Iraq died in 2005. She has sisters in Iraq who work in the private sector; but she has little contact with them. (Exhibit 2; TR 56-57)

Applicant has a friend in Jordan who is a car dealer whom he has known since 1997; he has occasional contact with him. (Exhibit 2; TR 58) Applicant has a brother-in-law in Denmark and has occasional telephone contact with him and visited him there in 2000.

Given Applicant's extensive ties to the U.S., I conclude it is unlikely he would yield to pressure if any of these relatives were coerced by the government of Iraq. Iraq is in transition since the coalition-led forces overthrew the Ba'athist regime of Saddam Hussein in April 2003. The Interim Government has reversed a long legacy of serious human rights abuses under the previous regime, but serious problems remain. (AN I-II)

### **References**

Applicant's colleague (Mr. O) who has known Applicant since 2003 and worked with him in Iraq. He vouched for Applicant's character and values. Applicant worked as an interpreter and had an interim Secret clearance. They shared living quarters for a year for the duration of the contract. While in Iraq, Mr. O learned that Applicant's parents were separated and that they were in bad health, but Mr. O never met them. Applicant was able to visit his family as the security situation was better in 2003 and 2004. However, later when restrictions were imposed as the security situation worsened, Applicant followed those rules and did not again contact his family. Mr O believed that the fact that he had

family in Iraq was a positive fact as he was motivated for Iraq to be a good country and he understood the local culture which was helpful to achieving the U.S. mission in Iraq. This colleague has continued to know him since they both returned to the U.S. He has visited Applicant's home. This colleague observed Applicant in sensitive security situations and observed that Applicant was very helpful in assisting people to understand the cultural differences. While in Iraq, Mr. O's safety relied on Applicant. He stated, "I've trusted my life with him and I would do it again." (Exhibits A, B; TR 23-26; 26-34; 34-40)

The Linguist Team Supervisor who knew Applicant from March to May 2005 when he worked for Employer #2 attested he was "an invaluable asset" and rapidly adapted to the demanding role of providing timely and accurate translation support. He is a dedicated professional and a team player. "His superb ability to read handwritten documents played a key role in quickly extracting valuable actionable intelligence from otherwise unintelligible documents and getting that intelligence out to the battlefield." He highly recommended him for any translation position. (Exhibit D)

The senior enlisted instructor recommended that Applicant be allowed to retain a security clearance. He worked with Applicant from April to May 2005 in Iraq in support of a training mission. He attested that Applicant has an excellent work ethic. This instructor never witnessed Applicant in a situation that would cause her to question his allegiance to the U.S. He is a trustworthy, responsible citizen. He is able to speak the Iraqi dialect and support operations in Iraq. (Exhibit E)

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below:

### **Guideline B - Foreign Influence**

***The concern:* 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: (1) not citizens of the United States or (2) 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.**

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching a fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

## CONCLUSIONS

### **Foreign Influence**

Because of Applicant's ties to his family who remain in Iraq and his wife's family in Iraq, the government raised foreign influence concerns under disqualifying conditions (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 E2.A2.1.2.6. Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government. He also has ties to a friend whom he has visited once in Jordan.

While I have seriously considered these security concerns and the document submitted for administrative notice which raises security concerns over Iraq's record, I conclude Applicant has presented sufficient evidence to meet the burden these circumstances present. While Applicant cannot mitigate<sup>(3)</sup>

the Government's security concerns over possible foreign influence under MC 1 because of his immediate family ties in Iraq nor under MC 3 as those ties are not casual and infrequent, he does meet the considerations under the whole person analysis. In evaluating his conduct, I considered the following Adjudication Process factors:

E.2.21.1. The nature, extent, and seriousness of the conduct; E.2.2.1.2. The circumstances surrounding the conduct, to include knowledgeable participation; E.2.2.1.3. The frequency and recency of the conduct; E.2.2.1.4. The individual's age and maturity at the time of the conduct; E.2.2.1.5. The voluntariness of the participation; E.2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes; E.2.2.1.7. The motivation for the conduct; E.2.2.1.8. The potential for pressure, coercion, exploitation, or duress; and E.2.2.1.9. The likelihood of continuation or recurrence. (E.2.2. Adjudication Process)

Looking at all of these circumstances, I conclude Applicant has overcome foreign influence security concerns. Given his strong and lengthy ties to the U.S. since he became a U.S. naturalized citizen, there is limited potential for coercion, exploitation or duress. There is no evidence that since Applicant came to the U.S. that the government of Iraq or any other foreign power has tried to exploit his relationship with his relatives in Iraq even though he worked there and had contact with them in his 2003 to 2004 assignment in his home town. The Iraq government is in transition. When the security situation worsened in 2005, Applicant was careful to follow all of the security guidelines in Iraq and did not even advise his family he was back working in Iraq. He adhered to the security policies and did not attend either his mother's or his father's funerals nor contact his brothers. Thus, under E.2.2.1.8., there is little potential for pressure, coercion, exploitation, or duress.

Under E.2.2.1.2., since he came to the U.S., he has had sought to limit his contact with Iraq except for work assignments there in 2003-04 and 2005 when his expertise as a translator allowed him to be of service to U.S. interests. While his birth family remain citizens and residents of Iraq, his parents are both deceased and his brothers have no ties to the government. Thus, under E.2.2.1.7., there is less motivation for pressure or coercion.

Significantly, all of Applicant's financial ties are in the U.S. When he worked in Iraq, his associates attested that he put the interests of the U.S. ahead of his commitment to his birth family and country. Under E.2.2.1.2., he has had not sought to continue any ties to Iraq except to use his expertise as a translator to advance the interests of the U.S.

In addition, Applicant's colleagues established that Applicant has a favorable work history. In his work community Applicant is assessed as reliable as he does excellent work. One colleague trusted Applicant in a difficult work situation and put his life in Applicant's hand. Thus, I conclude given his deep ties to the U.S. with his immediate family here (his wife and children) that it is unlikely that he could be exploited by coercive or non-coercive means by the government in Iraq in a way that could force Applicant to choose between loyalty to his family in Iraq and his loyalty to the United States. His wife is seeking to become a naturalized U.S. citizen. Under E.2.2.1.5., he would reliably resist any pressure tactics. Applicant credibly established he would never allow any pressure to compromise his integrity and his support for the U.S. Thus, any risk of either coercive or non-coercive foreign duress or influence on Applicant and/or his immediate family would appear to be slight and clearly manageable.

Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I conclude these circumscribed family ties are not of such a nature as to create any tangible risks of undue pressure on Applicant. 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 trustworthiness and fitness for access to classified information. Thus, the whole person concept recognizes the importance of viewing a person by the totality of their acts. Applicant has met the heavy burden to mitigate these foreign influence security concerns. Hence, I resolve SOR paragraph 1 and subparagraphs 1.a. through 1.e. in Applicant's favor.

## **FORMAL FINDINGS**

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline B FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For 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.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by DoD Directive 5220.6, dated January 2, 1992 (Directive).
2. A JCAVS Person Summary indicating "Loss of Jurisdiction, 2005 04 13" was dated August 9, 2005, and was received after the hearing was conducted.
3. E2.A2.1.3 Conditions that could mitigate security concerns include: 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; E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent.