

KEYWORD: Foreign Influence

DIGEST: Applicant is a translator for a defense contractor. He was born in Iraq, but left that country more than 15 years ago and is now a United States citizen. His mother and four siblings are citizens and residents of Iraq. Applicant has not presented sufficient information to meet his burden to establish his relatives are not agents of a foreign power or not in a position to be exploited by a foreign power in such a way as to force him to chose between his loyalty to them and his loyalty to the United States. Clearance is denied.

CASENO: 05-02311.h1

DATE: 02/09/2006

DATE: February 9, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-02311

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a translator for a defense contractor. He was born in Iraq, but left that country more than 15 years ago and is now a United States citizen. His mother and four siblings are citizens and residents of Iraq. Applicant has not presented sufficient information to meet his burden to establish his relatives are not agents of a foreign power or not in a position to be exploited by a foreign power in such a way as to force him to chose between his loyalty to them and his loyalty to the United States. Clearance is denied.

STATEMENT OF THE CASE

On June 23, 2005, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on July 9, 2005. The SOR alleges security concerns under Guideline B (Foreign Influence) of the Directive. There are two allegations under Guideline B, that Applicant's mother and his four siblings (two brothers and two sisters) are citizens and residents of Iraq. ⁽¹⁾

Applicant answered the SOR in writing on July 9, 2005, admitting all allegations under Guideline B. He elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the government's written case on September 9, 2005. Applicant received a complete file of relevant material (FORM) on October 30, 2005, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. He provided a response to the FORM on October 30, 2005, explaining his relationship with his family in Iraq. On November 14, 2005, Department Counsel noted no objections to consideration of the response to the FORM, and the case was assigned to me on November 28, 2005.

FINDINGS OF FACT

After a thorough review of the pleadings and exhibits, I make the following essential findings of fact.

Applicant is a 40 year old translator for a defense contractor. He was born and educated in Iraq and left there more than 15 years ago. He is married with no children. He became a United States citizen and received a United States passport in 2002. His mother and four siblings are citizens and residents of Iraq. He does not know their location or address in Iraq. (2) Applicant stated his relatives in Iraq do not have contact with either the new or old government. His contact with them is "very casual" and they do not know his address in the United States or that his work may take him to Iraq. He describes his contacts with people in Iraq as "very normal." (3)

A United States led coalition in 2003 removed the Ba'ath regime from power in Iraq after more than 30 years of rule. A new democratic government is being formed with citizens participating in democratic elections. (4) However, remnants of the former regime, transnational terrorists, and criminal elements remain very active in the country. There are continuous attacks against military and civilian targets. There are planned and random killings, extortions, and kidnaping. (5) There were reports of arbitrary deprivation of life, torture, impunity, and poor prison conditions. Civic life and the social fabric remained under intense strain from the active insurgency, as well as from a continuing shortage of basic services and staples. However, the new government's success in building an accommodating structure for the exercise of civil liberties, although burdened by the heritage of dictatorship and disregard for law, was clearly shown in the citizens' embrace of freedoms of speech and press, peaceful assembly, association, and religion. While major problems still remain, they are of a far different magnitude and nature than previously. (6)

POLICIES

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."⁽⁷⁾ Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.⁽⁸⁾

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a 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.

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽⁹⁾ 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 of recurrence.⁽¹⁰⁾

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.⁽¹¹⁾ 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.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.⁽¹²⁾ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.⁽¹³⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽¹⁴⁾ "[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."⁽¹⁵⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽¹⁶⁾

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

Guideline B - A security risk may exist when an individual's immediate family, 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.

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 section below.

CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

The government has established its case under Guideline B. Applicant's mother, brother, and three sisters in Iraq brings the matter under Foreign Influence Disqualifying Condition 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*). They are all citizens and residents of Iraq. I conclude the disqualifying condition has been established.

The Foreign Influence Mitigating Conditions that must be evaluated concerning the relatives in Iraq are E2.A2.1.3.1 (*a determination that the immediate family members 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 persons involved and the United States*), and E2.A2.1.3.3 (*contact and correspondence with foreign citizens are casual and infrequent*). An immediate family member includes spouse, father, mother, sons, daughters, brothers, sisters.⁽¹⁷⁾ As noted above, Applicant has the burden of presenting information to refute, extenuate, or mitigated the security concern established by the government. The only information presented by Applicant is that his contacts with his family members are very casual and very normal. He presents no information to establish the nature and duration of his contact with his family. There is no information presented to establish that his family members are not agents of a foreign power. There is no evidence presented that the family members are not in a position to be exploited by a foreign power in a way that could force Appellant to choose between loyalty to the family in Iraq and the United States. The conditions in Iraq are chaotic, and Iraqi citizens are subject to great danger from insurgents, terrorist, and criminals. There are terrorist activities and human rights abuses in the country, even though Iraq has made many strides to improve its human rights practices. I find Applicant has not established his family in Iraq are not vulnerable to exploitation by a foreign power. The likelihood of exploitation is a security concern. Applicant has not established that this exploitation could not force Applicant to chose loyalty to them over loyalty to the United States. Applicant has not met his heavy burden to established Foreign Influence Mitigating Conditions E2.A2.1.3.1. and E2.A2.1.3.3.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is not eligible for access to classified information.

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, Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

DECISION

In light of all of the circumstances in 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.

Thomas M. Crean

Administrative Judge

1. Item 1 (Statement of Reasons, dated Jun. 23, 2005). It should be noted that Applicant's Security Clearance Application lists his father, mother, and five siblings (three brothers and two sisters) as citizens and residents of Iraq. Also, his wife is a citizen of Iraq but resides in the United States with Applicant. The SOR only alleges security concerns based on his mother and four of his siblings citizenship and residence in Iraq.
2. Item 4 (Security Clearance Application, dated May 3, 2005).
3. Applicant's answer to the FORM, dated Oct. 30, 2005.
4. Item 5 (Department of State Background Note, Iraq, Aug. 2004).
5. Item 6 (Department of State Travel Warnings, dated Jun. 28, 2005).
6. Item 7 (Department of State Country Report on Human Rights Practices - Iraq, dated Feb. 28, 2005).
7. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
8. Directive ¶ E2.2.1.
9. *Id.*
10. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
11. *See* Exec. Or. 10865 § 7.
12. Directive ¶ E3.1.14.
13. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
14. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
15. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
16. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.
17. Directive E2.A2.1.3.1.