

DATE: December 27, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-05230

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

James Norman, Esq., Department Counsel

Pamela C. Benson, Esq., Department Counsel

FOR APPLICANT

John R. Niklos, Personal Representative

SYNOPSIS

Applicant is 41 years old, married with three children, and works as an Arabic translator for a defense contractor. His mother and three sisters live and work in Iraq. Applicant met his burden of proof and mitigated the foreign influence security concern by his strong ties to the U.S., past performance as a translator, and past performance recommendations. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On April 6, 2006, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on May 28, 2006 and elected to have a hearing before an administrative judge. The case was assigned to me on September 19, 2006. On October 13, 2006, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. At the conclusion of both cases, the Government moved to amend the SOR by deleting subparagraph 1.b., alleging Applicant's in-laws lived in Lebanon. The motion was unopposed because they now live in the U.S., and I granted the motion (Tr. 67, 68). DOHA received the hearing transcript (Tr.) on October 30, 2006.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 41 years old, married and has three children. He was born in Iraq and fled it in 1991 during an uprising after the Persian Gulf War. He has a college degree, and joined the Baathist Party in Iraq so he would be allowed to go to college. He went to Saudi Arabia by car when he fled Iraq, and worked as a translator in refugee camps. In 1994 he immigrated to the U.S. He married in 1997, and became a U.S. citizen in 2000. In the U.S., he managed gas stations from 1995 to 2005, including in a dangerous area where people had been shot in the past. He owns a house in the U.S. and does not own any property outside the U.S. He has a U.S. passport, and no other country's passport. When he fled Iraq, he did not have an Iraqi passport. (Tr. 43-49, 56, 59-62; Exhibits 1 and 2)

From July 2005 to July 2006, he worked as a translator with the U.S. Army in Iraq under a contract between the Government and a private company that supplied translators to the military, working with an interim clearance. As a native speaker, he understood the nuances and customs of Iraq. His commander and the U.S. army troops who served with Applicant give him the highest ratings for his translation accuracy and effectiveness in working with them. That commander called Applicant a "trusted interpreter" whose abilities are "the single greatest asset that has allowed" this military team "to effectively perform its mission." The commander also explains Applicant works in a "completely different environment, province, and Area of Operations" from the area where Applicant's mother and sisters live. The commander does not see any compromise in the near future to Applicant, his family, or the military mission. Applicant's abilities are needed constantly at the commander's area of responsibility. These evaluations and comments are endorsed by two other military members who served with Applicant. Furthermore, the military protects Applicant's identity by using a false name when he is working in Iraq. He had no contact with his family in Iraq when he worked there as a translator for a year. It is dangerous work that Applicant does for the military. (Tr. 35, 36, 38-41, 63; Exhibits 2, E-I, and Letters attached to Answer)

Applicant's widowed mother is retired and continues to live in Iraq. He has three sisters, all of whom are married and live in Iraq near their mother. Two sisters are teachers. Applicant's father was a teacher, and his mother lives on the retirement income from the Iraqi government earned by her late husband. The oldest sister is married to a medical assistant in a local hospital. The second oldest sister is married to a law school graduate. The third sister is a housewife and her husband is a teacher. Applicant last saw his mother in 2003 when he returned to Iraq after the termination of the Hussain dictatorship, and his family had a reunion. Previously he saw her in 2000 in Syria when they met there. He telephones his mother about every seven months, though she is old and hard of hearing, from the U.S. He spoke to his sisters monthly, according to the information from his May 2005 pre-hiring counter-intelligence interview, before he started to translate for the U.S. military. He did not speak to them or visit any of them while he worked in Iraq. (Tr. 37, 50-55; Exhibits 1, 2)

Applicant's in-laws are naturalized U.S. citizens living in the U.S. They were originally from Lebanon. (Tr. 46, 65; Exhibits 1, 2, A-D)

After the 2003 war to liberate Iraq from the Hussain dictatorship, Iraq instituted a democratically elected government in successive stages of democratic development. The U.S. policy is to help Iraqis establish a democratic government. Simultaneously, from 2003 to the present, remnants of the former regime, terrorist, and criminal elements became very active throughout Iraq seeking to establish their own power centers and implement their own policies and programs. As a result, violence is a daily occurrence in Baghdad, the capital, and in other areas of Iraq. The risk of terrorism directed against U.S. citizens and interests is extremely high. Petty theft is common, and carjackings occur daily. Kidnaping for profit or politics also is common. Iraq has a population of 23 million people. As Iraq attempts to develop democratic traditions following nearly 50 years of military or one party rule, it has many human rights problems, to include a pervasive climate of violence, poor detention facilities, arbitrary arrest and detention, denial of a fair public trial, an immature judicial system, limitations on civil rights, and other similar problems. Terrorists from across the middle eastern area are present and performing their activities in Iraq. The U.S. has committed its armed forces to help the elected Iraqi government. (Exhibits 3-7)

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, 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." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry*

§ 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (4) the individual'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 or recurrence (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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 establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

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

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 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 are relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.
E2.A2.1.1

CONCLUSIONS

Applicant's mother and three sisters live in Iraq. Two sisters are teachers in the public schools and are paid by the central, provincial, or local governments. His mother receives a pension from the Iraqi government based on her late husband's teaching service. Disqualifying Conditions (DC) that apply are: 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. E2.A2.1.2.1), DC 3 (Relatives who are connected with any foreign government. E2.A2.1.2.3), and DC 6 (Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government. E2.A2.1.2.6). Applicant's work as a translator for the U.S. Army makes him vulnerable through his family members, and makes them vulnerable to coercion, exploitation, or pressure by various terrorist and insurrection forces who work in Iraq against the established government and the U.S.

His sisters receive income from the Iraqi school system, and his family members are in a position to be exploited by a foreign power. Therefore, Mitigating Condition (MC) 1 does not apply. Applicant did not have contact with his family in Iraq while he served there for a year as a translator for their safety and his own safety. Moreover, his U.S. Army team protected him during that year with a pseudo-name and by placing him in their midst while on patrol. Any contacts he had with Iraqis during his work were as part of his translating duties on official Government business. His contacts with his family were infrequent because of the nature of his job while he worked as a translator, but they are not casual because of the intimate family connections. None of the other C under this security concern would apply to Applicant.

Under the "whole person concept", Applicant's extensive family and financial ties with the U.S., the independent decision he took in 1991 to flee Iraq rather than continue to live under the Hussain dictatorship, the dedicated and continuous efforts and restraints he has used while working in Iraq for the military to keep away from his family, show it is unlikely he will yield to pressure if his mother or sisters are coerced by the new Iraqi government or anyone else currently in Iraq. He owns a house in the U.S., and his wife and children reside there.

Knowing the dangers, Applicant decided to offer his services as an interpreter for U.S. troops in a war zone. He was in dangerous situations, but well paid for his services. He did not have contact with his family during the one-year tour of duty in Iraq to protect them and him from reprisals by terrorist and former regime fighters. Applicant was born in Iraq, so he spoke the language as a native, that ability being of additional value to the U.S. military in a war zone than a translator who learned Arabic in a school setting in the U.S. His motivation for assuming the dangerous position was to help the U.S. military and his native country, while earning more money than he could in the U.S. at his previous job managing gas stations. He apparently thought being a translator in Iraq would be less dangerous than managing a gas station in the area where he settled in the U.S. Applicant is competent in his translating and a needed asset, according to the military members for whom he translated. He is a mature individual, who is credible in his explanation of his background, current position and plan to remain away from his family while working in Iraq.

The Government has great need of competent translators in Iraq to help its armed forces. Applicant and the military took steps for more than a year to insulate Applicant from identification and reprisals. Those procedures worked successfully. There has not been any foreign influence on Applicant in the course of that year which has adversely influenced his work for the military or U.S. interests. Instead, he advanced those interests by his translation skills. He has demonstrated that his competency in Arabic has been dedicated to helping the military mission in Iraq. He is highly regarded and needed by his military team members in Iraq because of his language abilities, and the added component of placing his translations within the societal nuances of Iraq to aid his team in their important work.

Therefore, I conclude Applicant credibly established he would never allow any pressure to compromise his integrity and support for the U.S. Thus, any risk of either coercive or non-coercive foreign duress or influence on Applicant would be slight. The fair-minded and commonsense assessment of Applicant's trustworthiness and fitness for access to classified information has been demonstrated her by Applicant meeting his burden of proof based on his past year's performance in the interpreting function, his close connection to and affection for the U.S., his intentional practices of not contacting his mother and sisters while he worked in Iraq, the excellent recommendations received from the soldiers with whom Applicant served, with the totality of these acts mitigating the foreign influence security concerns. Considering the "whole person concept" factors, I conclude this security concern for Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: Withdrawn

Subparagraph 1.c: For Applicant

DECISION

In light of all of 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 Applicant. Clearance is granted.

Philip S. Howe

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).