



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

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ISCR No. 06-25452

Applicant for Security Clearance

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel

For Applicant: *Pro Se*

March 12, 2008

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

History of Case

On February 4, 2006, Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP).¹ On August 15, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B and E for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended

¹ Applicant offered a copy of a Security Clearance Application, dated June 2006, into evidence that he completed and submitted to the Government. It was marked Applicant Exhibit A. Some of the information contained in it is included, verbatim, on the SOR and in two sets of Interrogatories that are part of this record.

(Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on September 13, 2007, and requested a hearing before an Administrative Judge. DOHA received the request on October 1, 2007. Department Counsel was prepared to proceed on October 11, 2007, and I received the case assignment on October 16, 2007. After coordinating with Applicant's deployment schedule, DOHA issued a Notice of Hearing on December 31, 2007, and I convened the hearing as scheduled on January 23, 2007. The Government offered Exhibits (GX) 1 through 3, which were received into the record without objection. Applicant testified and submitted Exhibit (AE) A that was admitted into the record without objection. DOHA received the transcript of the hearing (Tr.) on January 31, 2008. The record was left open until February 15, 2008, to give Applicant time to submit additional documents. Applicant timely submitted AE B through O that were admitted into the record without objections from Department Counsel.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Iraq. (Tr. 14). The request and the attached documents are included in the record as Administrative Exhibits (AE) I through VII. Applicant did not object to my consideration of those Exhibits. Hence, the facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his Answer to the SOR, dated September 13, 2007, Applicant admitted the factual allegations in ¶¶ 1.a through 1.h of the SOR and denied ¶ 1.h, with explanations. He admitted that he omitted information as alleged in ¶¶ 2.a through 2.j, but denied that he falsified the information requested in the e-QIP and offered explanations.

Applicant is 40 years old. He was born in Iraq. He came to the United States in 1992. After arriving in the United States in 1992, he held various jobs in private industry. In June 2005, he began working as a bilingual bicultural advisor for a federal contractor that provides support for the U.S. Army in Iraq where he is currently deployed. He was deployed there from July 2005 until October 2005. He returned to Iraq in May 2006 and did not come back to the United States until January 2008 for this hearing. (Tr. 57).

Applicant attended high school and undergraduate college in Iraq, receiving a Bachelor's of Arts Degree in Economics in 1988. As required by the Iraqi government, he served in its army from 1989 to 1991. (Tr. 18). After fleeing Iraq with his father and brother he went to a fugitive camp in Saudi Arabia, before arriving in the United States

as a refugee in September 1992. He was 24 years old. (Tr.19). In 1999, he became a U.S. citizen. (GE 1 at 7).

Both of Applicant's parents were born in Iraq. His mother died in 1973 in Iraq and his father died in 2003 while living in the United States. He is one of nine children, all born in Iraq. Saddam Hussein's forces killed three of his brothers and targeted his father for arrest. (Tr. 17). During his school years, Saddam Hussein's party harassed him. One of his sisters was tortured in jail. (Tr. 22). His remaining brother and one sister live in the United States. His three other sisters are citizen residents of Iraq, along with their families. (Tr. 26). He telephones them a couple times a year. (Tr. 33). While previously stationed in Iraq, he spoke to them once a week. They did not visit him because he was not permitted to have physical contact with them. None of them have visited him in the United States. (Tr. 34).

After his mother died, Applicant's father remarried an Iraqi woman in 1978. They had five boys and four girls, all born in Iraq, and now residing in the United States. (Tr. 20). He and his father helped them immigrate to the United States, beginning in 1995. His stepmother became a naturalized U.S. citizen in July 2004, and his stepsiblings are alien residents. (Tr. 20-21; 28; AE 1).

In 1996, Applicant married an Iraqi woman, who was living in the United States. She became a naturalized U.S. citizen in September 1999. They have two children, born in the United States, and await the arrival of their third child. His mother-in-law is an Iraqi citizen, residing in the United States as a resident alien. His father-in-law was born in Iraq and is a naturalized U.S. citizen. (Tr. 32). His wife's six siblings reside in the United States. (Tr. 13).

In 1968, Applicant's grandfather, an Iraqi citizen resident, died and left a piece of property, with an estimated value of \$460,000, to Applicant's father and his other children. Because Applicant's father died in 2003, Applicant, along with his numerous siblings, may inherit a portion of his father's share of that estate. Applicant speculates that the amount he may receive will be less than \$10,000, based on the number of his father's heirs. (Tr. 36). Title to the property remains in his grandfather's name. (Tr. 35). Applicant, personally, owns two homes in the United States valued at \$170,000 with a \$100,000 mortgage. (Tr. 37).

In May 2005, Applicant completed a Security Clearance Application (SF 86) through his employer, who supplied some assistance in its completion. (AE A). In February 2006, he received a request to complete an e-QIP, which he did and returned to the Government. (GE 1). In April 2007, he answered a set of Interrogatories in follow-up to his responses in the e-QIP. (GE 2). Based on those answers, he received another

set of very specific Interrogatories that he answered and returned in July 2007. (GE 3). Applicant was in Iraq at the time he completed the two sets of Interrogatories.²

The August 2007 SOR alleges that Applicant falsified his responses to four questions on the February 2006 e-QIP and to six questions on the April 2007 Interrogatory, covering five areas of inquiry. Applicant denied that he intentionally falsified information on either document. (Tr. 59). For purposes of clarity, I refer to all documents and record evidence relevant to the specific SOR allegations.

1. SOR ¶¶ 2.a and 2.i (Foreign Property)

May 2005 SF 86: In response to Question 12: Your Foreign Activities – Property (*Do you have any foreign property, business connections or financial interests?*), Applicant answered “No.” (AE A).

February 2006 e-QIP: In completing Section 17a: Your Foreign Activities (*Do you have any foreign property, business connections, or financial interests?*), he again answered “No.” (GE 1).

April 2007 Interrogatory: In response to Question 15 of the: (*Do you have any financial interests (e.g., real estate; bank account; investments; or other financial assets) in a foreign country, or receive income (e.g., personal or business income; pension or retirement income; proceeds from a loan or rent; or other income) from a person, business or other organization located in a foreign country*), he answered “No.” (GE 2).

July 2007 Interrogatory: Question 4 asks specific questions about Applicant’s failure to disclose information about his father’s property on the April 2007 Interrogatory. It notes that “available records indicate that you are inheriting approximately \$460,000 from your father’s estate in Iraq.” (GE 3). Applicant explained why he omitted information about the potential inheritance: [Sic] “I already mentioned that at the CI screening interview. My great grandfather had left farming land worth a lot of money inheritance to a lot of uncles and aunts, and I have no interest getting any things of this property and I left Iraq long time ago.” (GE 3). At the hearing, he elaborated on the omission, indicating that he did not believe it was necessary to repeat what he had previously disclosed and because he had not legally received an interest in the property. (Tr. 39).

² During this hearing, Applicant referred to a CI screening interview that he had with an investigator in the early stages of the security clearance application process. The date of that interview is not clear, but it appears to have occurred after he executed the May 2005 SF-86.

2. SOR ¶¶ 2 b. and 2.e (Applicant's Iraqi Military Service)

May 2005 SF 86: In response to Question 11: Your Military History (*Have you ever served in the military*), Applicant disclosed that he was a trainer in the Iraqi army from January 15, 1989 to March 1, 1991. (AE A).

February 2006 e-QIP: In response to Question 17b: (*Are you now or have you ever been employed by or acted as a consultant for a foreign government or agency*), Applicant answered "No." (GE 1).

April 2007 Interrogatory: In response to Question 1 (*Have you ever been employed by, serviced with, or been a member of any of the following: 1.c. foreign military (including regular military, paramilitary, militia, or other group engaged in military operations)*), he answered "No." (GE 2).

July 2007 Interrogatory: Question 1 asked: "In you [sic] interrogatory response, you denied having ever been employed by a foreign government, to include military service. Available records indicate that you served in the Iraqi Army between the approximate dates of 1/89-3/90." (GE 3). In his answer he stated: [Sic] "Since I indicated every little detail in my SF 86 I figured out with myself I didn't have to repeat myself since the form went to data system." (*Id.*; Tr. 44-45).

3. SOR ¶¶ 2 c. and 2.j (Foreign Travel)

May 2005 SF 86: In response to Question 16: Foreign Countries You Have Visited within the last seven years, Applicant disclosed ten countries. Between January 1997 to August 2004, he visited Canada a few times. He visited Denmark, Germany, Switzerland, Italy, Greece, Turkey, Syria and Iraq, from November 2003 to December 2003. He visited Jordan on his way to Iraq a few times from August 2003 to November 2003. In the General Remarks section, at the end of the form, he noted, "Due to contract requirements, I will be working and residing in Iraq." (AE A).

February 2006 e-QIP: In answer to Question 18, which requested the same information as the SF 86, Applicant noted "Not Applicable." (GE 1).

April 2007 Interrogatory: In response to Question 28 regarding his travels, he listed three countries: "11-03-12/03-Iraq, Denmark, Germany; 8/03-11/03-Iraq." (GE 2).

July 2007 Interrogatory: Question 5 specifically inquired why he left out information on the previous interrogatory pertaining to his other travels since December 2003, in view of his current residence in Iraq. Applicant indicated that he did not think it was necessary to report his residence with the U.S. Army in Iraq from July to October 2005 or from May 2006 to July 2007. (GE 3).

4. SOR ¶¶ 2 d. and 2.h (Relatives)

May 2005 SF 86: In response to Questions 9 and 10: Your Relatives and Associates, Applicant listed 24 people, including his spouse, parents, stepmother, two children, four brothers, three sisters, mother-in-law, father-in-law, and nine half-siblings, along with their place of residence and citizenship. (AE A).

February 2006 e-QIP: In response to Question 14/15, Applicant listed his parents, stepmother, two children, four brothers, and three sisters. He did not list his stepsiblings because he had listed all of them on the earlier SF 86. (Tr. 40).

April 2007 Interrogatory: Question 9 inquired further into his E-QIP's answer, inquiring whether he "had any immediate family member . . . other relative (including in-laws), cohabitant, friend or business or professional associate, who is a citizen of a foreign country, or who lives in a foreign country?" He answered "No." (GE 2).

July 2007 Interrogatory: Question 2 followed up on the interrogatory answer, noting "available records indicate that your stepmother, sister, and eight half-siblings are all citizens of Iraq residing in the U.S. and that you denied having any family members that were citizens of a foreign country or reside in a foreign country." (GE 3). Applicant explained that he answered "No" based on his understanding of the word "foreign." He omitted the information in the April 2007 Interrogatory because: [Sic] "My understanding that my native country operations dose not mean as a foreign country. And since they were legally reside in US. And they were also in the process to get their US citizenship, some of them already became a US citizen therefore they weren't consider as a foreigners." (GE 3). He interpreted the word "foreign" to mean any country other than Iraq, where he was born, or the United States, where he held citizenship. (Tr. 51-52).

5. SOR ¶¶ 2 f. and 2.g (Relative's Foreign Military Service)

April 2007 Interrogatory: Questions 3 and 5 asked whether any of Applicant's immediate family members or relatives have been employed in the "foreign military (including regular military, paramilitary, militia, or other group engaged in military He answered "No," and did not disclose any information about his brother or brother-in-laws' previous military service. Again, he was confused about the translation of the word "foreign." He also did not have any specific information about his brother-in-laws army service. (Tr. 50).

July 2007 Interrogatory: After receiving the interrogatory, inquiring about the above omission, Applicant spoke to some of his colleagues in Iraq about the meaning of the word "foreign." He realized he made a mistake and noted in his answer that both brother-in-laws served in the Iraq-Iran war. (GE 3). In his Answer to the SOR, he indicated that he previously disclosed his brother's service in the Iraqi army from "1988 to 1991."

Applicant credibly and sincerely asserted his pride of U.S. citizenship and support for “the mission of liberation of Iraq hundred percent.” (Tr. 21). He loves the United States. “After I got to United States I find the freedom here, me and my family. We find like the real life here, . . . we love and we will support, will protect this life and this really excellent life in America.” (Tr. 23).

Throughout the hearing, Applicant denied any intention to falsify the documents he submitted to the Government. (Tr. 52). “I don’t want to hide any information I have about my background, from like the defense of –Department of Defense or any other American agency.” (Tr. 23). While in Iraq, he phoned for assistance in completing the forms, but does not remember the date or which document he was completing when he made the call. He was told to answer the questions, as he understood them. (Tr. 67).³ During cross-examination, he said he did not want to repeat all of the details he included in the May 2005 SF 86 when he completed the February 2006 e-QIP. He found the forms hard to understand. (Tr. 24). He takes responsibility for not fully completing the E-QIP and April 2007 Interrogatories. (Tr. 61).

Applicant joined the U.S. Armed forces to assist with the war on terror. “I joined the force to help them and to help the Iraqis in translating in the advising of the American forces commanders. I did that in many camps, in many places. I worked with the commanders at different levels. . . . I help with all my effort and all I could to success the mission of freedom of Iraq.” (Tr. 23). Applicant submitted several exhibits attesting to his training, capabilities and contributions to those efforts. In June 2005 he completed a Linguist Training Course. (AE H). In July 2006, he received a certificate of completion in “The Basics of Government Contracting in Iraq.” (AE I). According to his performance evaluations for the months of January, March and November 2007, he exceeded requirements in the many categories. His most recent evaluation for January 2008, indicate that he exceeded requirements in all categories. (AE C, J, L, and M). He received a Certificate of Appreciations from his commander for his “exemplary service and outstanding cooperation in support of Operation Iraqi Freedom” for the time periods of October 1, 2006 to March 2007, and one from April 2007 to March 2008.⁴ (AE G and O). He has held an interim Secret clearance since working with the U.S. Army. (Tr. 56).

I take administrative notice of the following facts: In 2003, The United States led a coalition to remove Saddam Hussein from power in Iraq. After free elections, Iraq’s new government took office. Despite the elections and new government, Iraq remains engulfed in violence, perpetrated by Al Qaeda terrorists and other insurgents. Numerous attacks and kidnappings have target the U.S. Armed Forces, contractors, and other civilians, as well as Iraqis. Even with aggressive governmental action against terrorists, the threat of terrorism in Iraq remains high. Terrorist groups conduct intelligence activities as effectively as state intelligence services.

³ The 2006 e-QIP does not contain a phone number to call for assistance; however, a contact person and phone number are listed on both sets of Interrogatories, giving credence to Applicant’s testimony that he sought assistance in completing the forms.

⁴ March 2008 appears to be a typographical error, in that March 2008 is a premature date as of the writing of this opinion.

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 describes nine conditions that could raise a security concern, one of which may be disqualifying in this case: (a) “contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.”⁵

In this case, Applicant has some telephonic contact with his three siblings, who are resident citizens of Iraq. While he was in Iraq, he phoned them more frequently than he does when he is at home in the United States. His relationship with them potentially creates a heightened risk of foreign pressure or attempted exploitation because terrorists in the Middle East seek intelligence and are hostile to United States’ interests, and possibly because of his family’s previous experiences with Saddam Hussein’s party.

The Government produced substantial evidence of this disqualifying condition, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. Two Foreign Influence Mitigating Conditions under AG ¶ 8 are potentially applicable to the disqualifying conditions:

(b) there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign person, group, government, or country is

⁵ The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;

Applicant established application of AG ¶ 8(b). Based on his relationship and loyalty to the United States, he can be expected to resolve any conflict of interest in favor of the U.S. interest. He has lived in the United States since 1992, after fleeing Iraq, and did not return to Iraq until his employment with the U. S. Army in June 2005. The majority of the members of his large family, including his wife, are naturalized U.S. citizens or resident aliens, residing in the United States. He has two children who were born in the United States. He owns property in the United States. He has worked in the United States since arriving here with his father and brother over 15 years ago. He subsequently helped all of his other family members immigrate here. There is no evidence that he has connections or contact with any people other than his sisters in Iraq.

AG ¶¶ 8(c) has some application because Applicant's relationship with his sisters appears to be casual and based on telephone communication rather than personal contact. He cautiously abides by the U.S. Army's regulation that precludes any physical contact with family members while he is stationed in Iraq.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

One Personal Conduct Disqualifying Condition is particularly relevant and potentially disqualifying in this case. Guideline ¶ 16(a) provides that the "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities" may raise a security concern. Applicant incorrectly answered four sections on the February 2006 e-QIP and six questions contained in the April 2007

Interrogatories. He denied that he intentionally falsified his answers or attempted to deceive the Government.

When a falsification allegation is controverted or denied, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred. ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

SOR ¶¶ 2.a and 2.i allege that Applicant falsified the February 2006 e-QIP and April 2007 Interrogatory because he did not disclose the information about a potential inheritance from his father's estate. Applicant admitted the omission, but asserted that he disclosed the information during the CI interview. Additionally, he did not believe it was important to list the property on the documents because he had not received a legal right to the property, as title remains in his grandfather's name. I find Applicant's position credible, especially in view of the fact that the SOR specifically listed \$460,000 as the amount of the property, which information came from Applicant in all probability, and put the Government on notice of the potential inheritance. Arguably, he was not obligated to disclose a speculative interest in a piece of property that had not transferred to him.

SOR ¶¶ 2.b and 2.e allege that Applicant falsified the February 2006 e-QIP and April 2007 Interrogatory because he did not disclose his Iraqi military service from "January 1989 to March 1991" on either document. The SF 86 listed those specific dates. The Government obviously had notice of his conscription into the Iraqi army from the SF 86 when it drafted the April 2007 Interrogatories because it included those dates on subsequent documents. As an aside, Question 17 on the e-QIP does not specifically ask about previous foreign military service, but whether one has acted as a foreign consultant. That distinction could be confusing to an applicant.

SOR ¶¶ 2.c and 2.j allege that Applicant falsified the February 2006 e-QIP and April 2007 Interrogatory because he did not list all of his travel and travel dates. The allegations recited various countries and travel dates that he allegedly omitted. The Government must have had previous notice of his specific travel history and his intentions to reside and work in Iraq when it drafted the April 2007 Interrogatories, as it incorporated specific facts listed on the SF 86.

SOR ¶¶ 2.d and 2.h allege that Applicant falsified the February 2006 e-QIP and April 2007 Interrogatory because he failed to disclose certain family members, and their citizenship and residency. Applicant listed 24 family members on the SF 86, including his spouse, mother-in-law, father-in-law, nine half-siblings, his sisters, stepmother, and brothers-in-law, along with their residency and citizenship at the time he completed the form. The Government clearly had notice of all of his relatives because in the April 2007

Interrogatory and SOR, it specifically referred to some of his relatives that he listed on the SF 86.

SOR ¶¶ 2.f and 2.g allege that Applicant falsified the February 2006 e-QIP and April 2007 Interrogatory because he did not disclose his brother's or brother-in-laws' service in the Iraqi army. In his Answer, he stated that he previously disclosed the specific dates of his brother's conscription that were contained in the SOR, indicating that the Government had notice of his brother's military service. In regard to omitting his brother-in-laws' service records, he initially misunderstood the word "foreign" when reviewing those documents, and additionally, did not have specific information about the times or positions his family members served. Both explanations are believable.

Applicant admitted that he omitted certain information from the e-QIP and April 2007 Interrogatory. However, he also provided evidence that he thoroughly disclosed the information, allegedly omitted, in the May 2005 SF86 or during a subsequent interview. Based on that, he believed the information was in the Government's "data system" and that he had made sufficient disclosure. While it would have been more prudent for Applicant to re-disclose the information in the e-QIP and April 2007 Interrogatory and not rely on his personal interpretation of the disclosure requirements, I do not find his omissions rising to a level of intentional wrongdoing in an effort to deceive the Government. Nor do I find that such omissions raise questions about his reliability or ability to protect classified information. Based on the documentary evidence in this record, Applicant's demeanor and obvious language differences (given his native language is not English), his explanations for the omissions are reasonable. I believe some of the omissions were possibly misguided or negligent, and others were the result of confusion, but none of them were intentional. Hence, the evidence does not establish deliberate falsification. Accordingly, Guideline E is found in his favor.

Whole Person Concept

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors (APF) listed at AG ¶ 2(a): "(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 individual's age and maturity at the time of the conduct; (5) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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." ". Because foreign influence does not involve misconduct, voluntariness of participation, rehabilitation and behavior changes, etc., the eighth APF, "the potential for pressure, coercion, exploitation, or duress," is the most relevant of the nine APFs to this

adjudication.⁶ Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

The Appeal Board requires the whole person analysis address “evidence of an applicant’s personal loyalties; the nature and extent of an applicant’s family’s ties to the U.S. relative to his [or her] ties to a foreign country; his or her ties social ties within the U.S.; and many others raised by the facts of a given case.” ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Four circumstances weigh against Applicant in the whole person analysis. First, there is a significant risk of terrorism and various human rights abuses in Iraq. More importantly for security purposes, terrorists are hostile to the United States and actively seek classified information. Terrorists, and even friendly governments, could attempt to use Applicant’s sisters to obtain such information. Second, he had numerous connections to Iraq before he immigrated to the United States in 1992. Following his birth, he spent his formative years there, along with a large family. He was educated at an Iraqi university and subsequently was conscripted into its army. Third, his sisters and their families remain resident citizens of Iraq. Fourth, he has some contact with his siblings. Fifth, three of his brothers were killed by the Hussein’s regime and his father was targeted for arrest by it. His sister was tortured and he was harassed for holding contrary political beliefs.

Substantial mitigating evidence weighs in favor of granting Applicant a security clearance. He is a mature person, who has lived in the United States for 15 years, and has been a naturalized citizen for eight and a half years. His spouse has been living in the United States for a number of years and is a naturalized citizen, as are his two children. He obviously has a strong sense of patriotism toward the United States, as witnessed by his dedication and work with the U.S. Army. There is no evidence he has ever taken any action that could cause potential harm to the United States. His military supervisors, who work with him daily in a war zone, praise his work in the cause of freedom in Iraq. After fleeing Iraq in 1992, he never returned until he worked with the U.S. Army in July 2005. He appreciates his new life in the United States and opportunities.

Applicant held a security clearance during his tenure with the U.S. Army without any indication that he breached security policies or procedures. While that fact is not normally to be considered a factor in granting a clearance, the Appeal Board noted in ISCR Case No. 05-03846 as follows:

⁶ See ISCR Case No. 02-24566 at 3 (App. Bd. July 17, 2006) (stating that an analysis under the eighth APF apparently without discussion of the other APFs was sustainable); ISCR Case No. 03-10954 at 5 (App. Bd. Mar. 8, 2006) (sole APF mentioned is eighth APF); ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006) (remanding grant of clearance because Judge did not assess “the realistic potential for exploitation”), *but see* ISCR Case No. 04-00540 at 6 (App. Bd. Jan. 5, 2007) (rejecting contention that eighth APF is exclusive circumstance in whole person analysis in foreign influence cases).

As a general rule, Judges are not required to assign an applicant's prior history of complying with security procedures and regulations significant probative value for purposes of refuting, mitigating, or extenuating the security concerns raised by the applicant's more immediate disqualifying conduct or circumstances. See, e.g., ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No. 02-10113 at 5 (App. Bd. Mar. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd. May 30, 2006). However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the nation security. See, e.g. ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006). The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report a foreign power's attempts at coercion or exploitation.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole person, I conclude Applicant has mitigated the security concerns pertaining to foreign influence.⁷ Overall, the record evidence, including his testimony, leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his foreign influence.

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:	FOR APPLICANT
Subparagraphs 1.a through 1.h:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2. through 2.j:	For Applicant

⁷ I conclude that the whole person analysis weighs heavily toward approval of his security clearance. Assuming a higher authority reviewing this decision determines the mitigating conditions articulated under AG ¶8 do not apply and severs any consideration of them, I conclude the whole person analysis standing alone is sufficient to support approval of a security clearance in this case.

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

SHARI DAM
Administrative Judge