



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



In the matter of: )  
 )  
----- ) ISCR Case No. 07-08256  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: D. Michael Lyles, Esquire, Department Counsel  
For Applicant: James H. Drescher, Esquire

March 28, 2008  
\_\_\_\_\_

**Decision**  
\_\_\_\_\_

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) to Applicant on October 28, 2007. The SOR is equivalent to an administrative complaint and it details the factual basis for the action. The issues in this case fall under Guideline B for foreign influence based on Applicant's ties or connections to Iraq. For the reasons discussed below, this case is decided for Applicant.

In addition to the Executive Order and Directive, this case is brought under the revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (Revised Guidelines) approved by the President on December 29, 2005. The Revised Guidelines were then modified by the Defense Department, effective

---

<sup>1</sup> Executive Order 10865, *Safeguarding Classified Information within Industry*, dated February 20, 1960, as amended, and DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive).

September 1, 2006. They supersede or replace the guidelines published in Enclosure 2 to the Directive. They apply to all adjudications and other determinations where an SOR has been issued on September 1, 2006, or thereafter.<sup>2</sup> The Directive is pending revision or amendment. The Revised Guidelines apply here because the SOR is dated after the effective date.

Applicant replied to the SOR on November 10, 2007, and requested a hearing. The case was assigned to me on December 26, 2007. The hearing took place as scheduled on February 7, 2008, and the transcript (Tr.) was received on February 19, 2008.

The record was left open until February 21, 2008, to allow Applicant an opportunity to submit additional documentary evidence. No such matters were submitted.

### **Findings of Fact**

The SOR alleges that Applicant may be subject to foreign influence due to his family ties or connections to Iraq as well as his service in the Iraqi Army from about 1985 to 1990. Applicant admits the factual allegations in SOR subparagraphs 1.a–1.d. In addition, the following facts are established by substantial evidence.

Applicant is a 41-year-old Arabic linguist and cultural advisor employed by a language-related services company. He has worked for this company since June 2005. Born in Iraq, he became a U.S. citizen in November 2002; he had held a U.S. passport since January 2003. He changed his last name to a westernized name in light of the events of 9/11. With an interim security clearance, he has already worked approximately 18 months in Iraq where he was supporting the mission of the U.S. armed forces. This is the first time he has applied for a security clearance.

In 1985, Applicant was attending high school and living with his family when he was conscripted to serve in the Iraqi Army. Although the Iran-Iraq war (1980–1988) was ongoing, Applicant did not see duty in that conflict as he was assigned duties elsewhere working as an electrician. In 1989 or 1990, Applicant was allowed to leave the army, and he returned to living with his family where he worked with his father selling auto parts (Exhibit B).

Iraq—under the dictatorship of Saddam Hussein—invaded Kuwait in August 1990. As result, Applicant and many others who had previously served in the army were recalled to duty. Applicant discussed the situation with his father and decided not to return to the army. He continued living with his family until Iraq was expelled from Kuwait in February 1991. After the war, there were rebellions or uprisings in northern

---

<sup>2</sup> See Memorandum from the Under Secretary of Defense for Intelligence, dated August 30, 2006, Subject: Implementation of Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (December 29, 2005).

and southern Iraq, which the Iraqi government responded to with crushing force against its own citizens. It was then that Applicant and one of his brothers decided to leave Iraq. They were successful in fleeing Iraq, but soon found themselves in a refugee camp in northern Saudi Arabia where they spent the next couple of years under difficult conditions.

Applicant and his brother were eventually granted political asylum in the U.S. through the assistance of U.N. representatives and U.S. immigration officials who visited the refugee camp. In about 1994, Applicant and his brother were flown to the U.S. with the assistance of a religious organization that paid for the airfare. Their destination in the U.S. was their current state of residence as they had a distant cousin living there. Applicant arrived with the clothes on his back and he spoke little English.

Applicant has been gainfully employed in the U.S. since approximately early 1995, sometimes working two jobs. A neighbor helped Applicant find his first job as a busboy at a Mexican restaurant. After about five months, Applicant started a second job at a restaurant known for its hamburgers. Applicant worked at this restaurant during 1995–2005. He worked his way up the ladder in various positions until he was promoted to general manger. In addition to the restaurant business, Applicant worked as a retail sales associate for about three years during 2000–2003. A longtime soccer player, Applicant also plays semi-professional soccer for a local team.

Applicant has immediate family members who are citizens of or residents in Iraq. His mother and father are Iraqi citizens and live in Iraq. His mother has been a stay-at-home mother and wife. His father is retired. During the 1960s–1980s, his father worked for the Iraqi transportation department, and he receives a pension as a result. He worked selling auto parts after retiring from the transportation department. Applicant periodically provides relatively small sums of money to his parents to supplement their retirement income. Applicant has regular (about twice a month) contact with his parents via telephone calls.

Applicant has two brothers and two sisters who are Iraqi citizens living in Iraq. One sister is in the process of obtaining a divorce and she is living with her parents. The other sister has recently remarried and she is a housewife. Her first husband was executed before the fall of the Hussein regime, as he opposed the regime. One brother works as a truck driver, and he is married with two children. Applicant's youngest brother recently completed high school and is now going to college. Applicant is seeking to sponsor this brother's immigration to the U.S. and that process is pending. His contact with his siblings in Iraq is usually incidental to his telephone calls to his parents.

Other than his father's status as a pensioner, none of Applicant's immediate family members in Iraq are connected with the Iraqi government.

Applicant also has a brother who is an Iraqi citizen living in Germany. This brother works at a grocery store. He has lived in Germany for about ten years, and he is

in the process of obtaining German citizenship. His contact with this brother is limited to a telephone call every three months or so.

Starting in January 2006, Applicant worked as an Arabic linguist and cultural advisor in Iraq for approximately 18 months. His assignment was to work as an interpreter at a detainee facility where he was heavily involved with interrogating detainees. According to several individuals who worked with him, Applicant's duty performance was superb and his linguistic abilities were instrumental in the exploitation of detainees suspected of terrorist activities (Exhibit A). According to a task force senior interrogator, an Army major, Applicant possesses several factors that give him the "uncanny ability [to] identify weaknesses in the detainee for the interrogator to exploit" (Exhibit A at 5). Likewise, another Army interrogator who testified at the hearing opined that Applicant was easily one of the best interpreters at the facility because he had, among other things, the ability to "channel the emotions, the behavior and the body language of the interrogator, he was literally a mouthpiece for us" (Tr. 92). For his part, Applicant enjoyed the work and "felt like [he] was making a difference in a war against religious extremists who were using their religion as an excuse to kill innocent people, including U.S. troops and Iraqi women and children" (Exhibit B).

Applicant did not visit his family when he was working in Iraq (Tr. 78). Other than his mother, none of his family knew he was in Iraq. His mother knew he was in Iraq, but he led her to believe he was there working for an American construction company.

Applicant has no business, financial, or property interest in Iraq or any other foreign country. His financial affairs are all in the U.S. and, in general, consist of a condo he has owned and lived in with his brother for the last several years, financial accounts worth about \$45,000, and personal property.

Administrative notice is taken of certain facts about Iraq as described in the government's written request (Exhibit 2). The situation in Iraq is well known within the Defense Department and it is unnecessary to repeat the specific details here. In general terms, the overall security situation in Iraq is fluid and at times quite unstable if not deadly, but the situation has improved as of late.

## **Policies**

This section sets forth the general principles of law and policies that apply to an industrial security clearance case. To start, no one has a right to a security clearance.<sup>3</sup> As noted by the Supreme Court in 1988 in the case of *Department of Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if

---

<sup>3</sup> *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10<sup>th</sup> Cir. 2002) ("It is likewise plain that there is no 'right' to a security clearance, so that full-scale due process standards do not apply to cases such as Duane's.").

they must, on the side of denials.”<sup>4</sup> A favorable decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.<sup>5</sup> An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.<sup>6</sup> Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>7</sup> The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>8</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>9</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>10</sup> In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>11</sup> The agency appellate authority has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.<sup>12</sup>

The Revised Guidelines set forth adjudicative guidelines to consider when evaluating a person’s security clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based upon consideration of all the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept. A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant’s loyalty.<sup>13</sup> Instead, it is a determination

---

<sup>4</sup> *Egan*, 484 U.S. at 531.

<sup>5</sup> Directive, ¶ 3.2.

<sup>6</sup> Directive, ¶ 3.2.

<sup>7</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>8</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>9</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>10</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>11</sup> *Egan*, 484 U.S. at 531.

<sup>12</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>13</sup> Executive Order 10865, § 7.

that the applicant has not met the strict guidelines the President has established for granting eligibility for a security clearance.

### **Analysis**

Under Guideline B for foreign influence,<sup>14</sup> a security concern may arise due to foreign contacts and interests “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.”<sup>15</sup> There are two disqualifying conditions<sup>16</sup> that could raise a security concern and may be disqualifying in this case:

DC 1. [C]ontact with a foreign family member, business, or professional associate, friend, or other person who is a citizen of or a resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

DC 2. [C]onnections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information.

Of course, 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. But if only one relative resides in a foreign country and an applicant has contact 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.<sup>17</sup>

Here, the two disqualifying conditions apply because Applicant has contacts with and connections to immediate family members in Iraq. He comes from a large family, most of whom live in Iraq. He has regular telephonic contact with his parents and sometimes his siblings. These circumstances create the potential for a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of his ties to immediate family members in Iraq. Also, the circumstance of his financial support to his parents is material because it indicates the strength of his family ties. It is not enough to constitute a substantial business, financial, or property interest in a foreign

---

<sup>14</sup> Revised Guidelines at pp. 5–6 (setting forth the security concern and the disqualifying and mitigating conditions for Guideline B).

<sup>15</sup> Revised Guidelines at p. 5.

<sup>16</sup> Revised Guidelines at p. 5.

<sup>17</sup> See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

country, however, and the fifth disqualifying condition under the guideline does not apply. Finally, the circumstance of his service in the Iraqi Army is not particularly material because (1) he was a conscript, (2) he refused to return to duty when recalled, and (3) it occurred before he was a U.S. citizen.

Three of the six mitigating conditions<sup>18</sup> under the guideline may apply to the facts and circumstances of this case:

MC 1. [T]he nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

MC 2. [T]here is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is 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

MC 3. [C]ontact or communications with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

The first and third MC do not apply because Applicant's relationships with his immediate family members in Iraq are of sufficient magnitude or strength to negate these two MCs. In the post-9/11 world, there is at least a remote or slight possibility that dangerous elements within Iraq could attempt to use his family members to coerce or pressure Applicant.

But the second MC applies in Applicant's favor. The record evidence supports a conclusion that Applicant has a depth of loyalty to the U.S., so that he can be expected to resolve any conflict in favor of the U.S. interest. He demonstrated his depth of his commitment to the U.S. by working approximately 18 months supporting the U.S. armed forces in Iraq.<sup>19</sup> His work was not minor or trivial, as he performed important duty as an Arabic interpreter who participated in the interrogation of detainees (Exhibit A).

---

<sup>18</sup> Revised Guidelines at p. 6.

<sup>19</sup> See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008) ("an applicant's proven record of action in defense of the U.S. is very important and can lead to a favorable result for an applicant in a Guideline B case.") (citation omitted).

To sum up under the whole-person concept, this is not a case of “divided loyalties”<sup>20</sup> with an applicant who has one foot in the U.S. and one foot in his native country. On the contrary, the evidence shows Applicant has both feet planted in the U.S. and that he has significant contacts and ties to the U.S. For example, Applicant’s employment, financial, and property interests are in the U.S. By all appearances, Applicant and his brother have made the U.S. their home and that is their future. His work on behalf of the U.S. in a war zone is further evidence of the strength of his ties to the U.S. This circumstance and the favorable character evidence deserve substantial weight. Taken together, these circumstances support a conclusion that Applicant can be expected to resolve any potential foreign influence or pressure by either coercive or non-coercive means in favor of the U.S. interest.

In addition, given that the U.S. is producing relatively few Arabic speakers, this is a skill set that cannot be ignored. Also, Applicant’s language skills are enhanced by his understanding of the country and cultural nuances that might be lost on a foreign Arabic speaker. This circumstance does not dictate the outcome of the case, but it does receive some consideration under the whole-person concept.

To conclude, based on the record evidence as a whole, both favorable and unfavorable, Applicant has presented sufficient evidence to explain, extenuate, or mitigate the foreign influence security concern. Applicant met his ultimate burden of persuasion to obtain a favorable clearance decision. This case is decided for Applicant.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	For Applicant
---------------------------	---------------

Subparagraphs 1.a–1.d:	For Applicant
------------------------	---------------

### **Conclusion**

In light of all of the circumstances, it is clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Michael H. Leonard  
Administrative Judge

---

<sup>20</sup> Revised Guidelines at p. 5.