



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



In the matter of:)	
)	
)	ISCR Case No. 07-10634
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn Hoffman, Esquire, Department Counsel
For Applicant: *Pro Se*

April 3, 2008

Decision

HEINY, Claude R., Administrative Judge:

Applicant is an Iranian born, naturalized U.S. citizen, who has lived in the United States since 1992. Applicant's four siblings are citizens and residents of Iraq. For 14 months, he acted as an interpreter for U.S. forces in Iraq. After a thorough review of the case file, pleadings, exhibits, and evidence, I conclude Applicant has rebutted or mitigated the government's security concerns under Guideline B, foreign influence. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

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,¹ the Defense Office of Hearings and Appeals (DOHA) issued a

¹ 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 (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.

Statement of Reasons (SOR) on October 27, 2007, detailing security concerns under Foreign Influence.

On November 17, 2008, Applicant's answered the SOR in which Applicant requested a hearing before an administrative judge. On January 15, 2007, I was assigned the case. On February 11, 2008, DOHA issued a notice of hearing scheduling the hearing held on February 20, 2008. The government offered Exhibits (Ex.) 1 and 2, which were admitted into evidence. Applicant and two witnesses testified on Applicant's behalf and he submitted Exhibits A through H, which were admitted into evidence. On March 11, 2008, the transcript (Tr.) was received.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel requested that I take administrative notice of certain facts relating to Iraq. The request and the attached documents were not admitted into evidence but were included in the record as Hearing Exhibits (HEx) I—VIII. The facts administratively noticed are set out in the Findings of Fact, below.

Notice

Applicant was informed he was entitled to 15 days notice of his hearing. The Notice of Hearing was sent out on February 11th for a February 20th hearing. Applicant stated he was ready to proceed and did not need additional time to prepare for the hearing. (Tr. 10-11)

Findings of Fact

In his Answer to the SOR, Applicant admitted with explanations the factual allegations in ¶¶ 1.a, 1.b, and 1.c. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is a 37-year-old translator who starting working for a defense contractor in October 20, 2004. Since November 2007, he has been with his current employer as a cultural advisor providing training to U.S. troops, and is seeking to maintain a security clearance. (Ex. B, Tr. 39, 40)

Applicant grew up in the middle part of Iraq. In 1986, Applicant's father, a school teacher, was executed by the Saddam Hussein regime. His father had spoken out against the brutal former regime. (Tr. 26, 89) Applicant was treated as a second class citizen from elementary school through college. Applicant's mistreatment followed his father's execution. The Hussein government had confiscated all of his family possession and made his family members dependent on the money sent to them.

Applicant attended university for a couple of years and was then forced to join the "cultural college." If a family member had been executed children or members of the

family were not allowed to become a teacher, doctor, or engineer. (Tr. 27) In 1991, Applicant—then age 20—was a student in the culture college when he joined the uprising against Saddam Hussein. His group rose up to take control of government and party buildings. (Tr. 28) Applicant is the only member of his group to survive. The others were killed in the streets. (Tr. 28) When that uprising failed, Applicant and his brother, who had also participated in the uprising, were chased by the Iraqi Republican guard to the Iraqi border. (Tr. 21) His brother was wounded in the leg. At the time of the uprising, the Iraq government determined those who rose up against the Hussein regime were no longer Iraqi citizens. (Tr. 49)

Applicant and his brother were placed in a refugees' camp on the Iraqi-Saudi border. While in camp, they did volunteer work with the United Nations high command for refugees and with the Americans doing translation. (Tr. 90) After 14 months, Applicant and his brother received political asylum and were granted access to the U.S. On August 7, 1992, Applicant arrived in the U.S. (Ex. D, Tr. 31)

Once in the U.S., Applicant accepted any available job and applied for college admission. In 1996, he started attending university part time as his English improved. (Tr. 32) Later, Applicant was full-time employed while pursuing full-time higher education. Applicant helped his family in Iraq overcome the consequences of the international economic embargo and the former regime's bias against his family. Applicant's family was classified as Class Z citizens because their father were executed and two sons fled the country to live in the U.S. (Tr. 107) The former regime punished his family because Applicant and his brother had fled the country. (Tr. 27)

In 2002, Applicant earned his B.S. in pharmacy. On January 9, 2004, he became a U.S. citizen. (Ex. E) He considers the day he became a U.S. citizen his birthday. (Tr. 34) He feels he is part of the U.S. His U.S. passport was issued on January 13, 2004. (Ex. G, Tr. 50) He never had an Iraqi passport. (Tr. 49)

Prior to 2003, Applicant applied at numerous U.S. government agencies offering his linguistic skills. He was hired by a defense contractor as a linguist and deployed to Iraq in December 2004. (Tr. 36) He spent 14 months with U.S. special forces as part of an assault team. (Tr. 25, 70) Except for a three-week vacation in the U.S. in July 2005, Applicant was in Iraq from December 2004 through February 2006. (Tr. 37) Applicant daily dealt with classified documents and the unit's secrets of counter terrorism procedures. He was involved in locating and obtaining the release of an American civilian hostage. (Tr. 48)

Applicant worked with U.S. ground forces in direct contact with enemy forces. He worked long hours in austere conditions with an ever present risk of hostile fire. Applicant has received numerous letters of recommendation due to his work in Iraq. Applicant was adept at operating in dangerous and fluid environments and was successful in providing needed information vital to the success of the Task Force's mission. Applicant's dedication made him an invaluable member of the team and provided his worth on every mission. Applicant is one of the best linguists in the business. (Answer to SOR) Applicant provided outstanding service, was always eager

to assist, was great to work with, always pleasant to be around, and an invaluable asset. His professionalism and work ethic is beyond reproach. (Answer to SOR) He has received certificates of appreciation for his outstanding performance and lasting contributions greatly enhancing combat readiness. He returned to the U.S. in early 2006.

For one month during August and September 2004, Applicant returned to Iraq to visit his dying mother. He had not seen his mother since March 1991. Applicant left for Iraq the same day he received the call about his mother's illness. (Tr. 35) While in Iraq, his mother died. During his stay in Iraq, Applicant missed his apartment and his lifestyle in the United States. (Tr. 34)

Applicant has three brothers and a sister who are residents and citizens of Iraq. His older brother, a mechanical engineer, is married to a teacher and has two children. (Tr. 25, 58, 60) His middle brother, a civil engineer, is married and lives with his older brother. This brother works building roads and schools for the Ministry of Planning. (Tr. 64, 77) His other brother is a driver whose wife graduated from business school. (Tr. 59, 60) He has never met his brother's wife. (Tr. 60) His youngest brother, who was six months old when his father was executed, is single and is attending business classes in college. (Tr. 52, 60) Applicant's only sister, a housewife, married in May 2007 and is expecting a child in 2008. Her husband works for a construction company as a driver. (Tr. 61) Applicant's cousin who lived in Jordan now lives in Iraq. His cousin sometimes works for a construction company and also buys cars. (Tr. 61-62) His family now feels safe with the U.S. presence. (Tr. 81)

Applicant has not talked with his family since October 2007. (Tr. 62) He last saw them in 2004 when his mother died. His family had no telephone. (Tr. 78) During Saddam Hussein's time, his family was not allowed to have a telephone in their home. (Tr. 24) Applicant never sent them any letters and any letters received from them had been opened. (Tr. 79) Starting in 2003, Applicant's brother would make weekly calls to check on his family. His uncle had a telephone. (Tr. 92) Prior to 2003, his brother would make a five minute call every three or four months. (Tr. 93)

Prior to the fall of Saddam Hussein, Applicant sent money may be three times a year to a cousin in Jordan who would give it to his family. (Tr. 53) He would send a couple of hundred dollars every once in a while. (Tr. 24) His brother in the U.S. sends about \$200 a month to their youngest brother. (Tr. 100) The money was used to buy food, clothes, and medical supplies.

Following the ouster of the former regime in April 2003, Applicant continued sending money to his family in Iraq. Applicant was stationed in Iraq and sent the money through Western Union (Ex. C) purchased in the military exchange. During the time he was in Iraq, he never contacted his family in Iraq. The only family member who knew he was in Iraq was his brother living in the U.S.

Applicant lives in the U.S. with his oldest brother. Applicant has his \$40,000 in his saving account and \$1,200 in his checking account. (Tr. 68) Both accounts are in the

U.S. (Tr. 44) He has no property outside of the U.S. and has no foreign investments.
(Tr. 45)

Iraq

I take administrative notice of the following facts. Iraq is a constitutional, parliamentary democracy with a federal system of government. (Hex I) It is a republic with a freely elected government led by a Prime Minister. (Hex IV) The 2005 Iraqi Constitution guarantees all Iraqis basic rights in many areas. Iraq's legislative branch consists of an elected Council of Representatives. Iraq's judicial branch is independent, and is under no authority but that of the law. The focus of the United States policy in Iraq remains on helping the Iraqi people build a constitutional, representative government that respects the rights of all Iraqis and has security forces capable of maintaining order and preventing the country from become a safe haven for terrorists and foreign fighters. The ultimate goal is an Iraq that is peaceful, united, stable, democratic, and security, with institutions capable of providing just governance and security for all Iraqis and is an ally in the war against terrorism.

The risk of terrorism directed against U.S. citizens and interests in Iraq remains extremely high. (Hex II) The Department of State continues to strongly warn U.S. citizens against travel to Iraq, which remains very dangerous. (Hex III) There is credible information that terrorists are targeting civil aviation. All vehicular travel in Iraq is extremely dangerous. The government was unable to diminish violent attacks, although large efforts were made to implement better security measures. (Hex IV)

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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Foreign Influence

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 ¶ 6)

Applicant has three brothers and a sister who are citizens and residents of Iraq. In 2004, he traveled to Iraq for the first time in 13 years to see his mother before she died. He has provided financial aid to his siblings in Iraq. Having considered all of the Foreign Influence disqualifying conditions, applicable conditions that could raise a security concern are AG ¶ 7. AG ¶ 7(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) and AG ¶ 7(b) (connections 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) apply.

The new Iraqi government relies upon the U.S. for support as it moves forward with its new form of government. While Iraq's human rights record under Saddam Hussein was very dismal and some problems continue, its human rights record is slowly improving under the new government.

In every case where a sibling lives overseas, there is a risk of pressure on this relative and through them upon the holder of a security clearance. Under the facts of this case, a heightened risk for exploitation, inducement, manipulation pressure, or coercion is not substantiated. Applicant has significant ties to the U.S. and few ties to Iraq. While he still has three brothers and a sister living in Iraq, he lives with his brother in the U.S. He has no financial or property interests in Iraq. He wants to help the U.S. in Iraq. Applicant's ties with the U.S. are much stronger than his ties with Iraq.

Applicant's work as an interpreter supported the U.S. military mission in Iraq. He spent 14 months with U.S. special forces as part of an assault team. Applicant worked with U.S. ground forces in direct contact with enemy forces. He worked long hours in austere conditions with an ever present risk of hostile fire. The Army holds his work as a translator in high regard. He provided more than language interpretation skills. He explained local cultural nuances and practices which greatly assisted the military in accomplishing its mission. During his time in Iraq, he worked very hard to help the Army. He developed a high level of trust with the Army.

If a heightened risk exists because he still has siblings in Iraq, he has mitigated that concern under MC ¶ 8(a) (the 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.) and MC ¶ 8(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 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).

Applicant's older brother, a mechanical engineer, is married to a teacher. His middle brother, a civil engineer, is married and works building roads and schools. His other brother is a driver whose wife graduated from business school. His youngest brother is a freshman in college. Applicant's sister is a housewife, married to a driver for a construction company. Applicant's cousin sometimes works for a construction company and buys cars. None of them are involved with organizations which seek to harm the U.S.

During the 14 months Applicant was in Iraq, he did not contact his siblings. They have not experienced any repercussions from any source because of Applicant. There is little likelihood that Applicant will be placed in a position of having to choose between

the interests of the U.S. and a foreign entity. Likewise, because of his close ties and his loyalties to the U.S., he would resolve any conflict of interest in favor of the U.S.

Whole Person Concept

Protection of our national security is of paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the adjudicative process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. In reaching this decision, I have considered the whole person concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I considered the totality of Applicant's family ties to Iraq and the heavy burden an Applicant carries when he has family members in a foreign country.

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 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." 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.

In the more than 15 years since he left Iraq, Applicant returned twice, once when his mother was dying and once to work as an interpreter for the U.S. Army. Because he guided the Army personal on local customs and nuances related to the spoken word and responded very well in highly dangerous situations, the Army views him as a valuable resource in helping it achieve its mission in Iraq.² With his long absence from Iraq, he has few contacts in the country outside of his four siblings.

While danger certainly exists for all who go to Iraq, Applicant and his siblings are in no greater danger than any other individual living and working in Iraq. The U.S. and Iraq governments have developed a close and positive working relationship. Iraq depends upon the U.S. to help in its fight to combat the developing insurgency and

²In ISCR Case No. 05-03846 at 6 (App. Bd. Nov.14, 2006), the Appeal Board recognized an exception to the general rule in Guideline B cases when an applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurs in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the national security and can be relied upon to recognize, resist and report a foreign power's attempts at coercion or exploitation.

terrorist forces. The Iraq government is moving forward with democracy and developing a rule of law, with the assistance of the U.S.

Applicant has no love for the former brutal regime. The Hussein regime killed his father, wounded his brother, and chased him to the boarder before he and his brother were able to escape. Because of his father's execution and he and his brother's presence in the U.S., his family was ill treated. He has no ties to any organization which seeks to harm the U.S. or to overthrow the existing Iraq government. Night after night, Applicant went in harms way to assist U.S. special forces in performing their duties in Iraq.

I have carefully weighed the evidence in favor of Applicant against the government's concerns about Applicant's ability to protect classified information. I find that there is little potential for Applicant to be pressured, coerced, or exploited because he has four siblings living in Iraq. Accordingly, I recommend that Applicant be granted a security clearance.

Overall, the record evidence 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 foreign influence security concerns.

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

Subparagraph 1.a – 1.c: For Applicant

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

CLAUDE R. HEINY II
Administrative Judge