



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



In the matter of:)
)
) ISCR Case No. 07-10641
)
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: Fadi F. Toma, Esq.

August 20, 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 December 12, 2005, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On April 23, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline B (Foreign Influence). 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 (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 on May 21, 2008, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on June 17, 2008. The case was originally assigned to me on June 17, 2008, and then reassigned to another administrative judge on June 20, 2008. DOHA issued a Notice of Hearing on June 25, 2008, scheduling the hearing for July 16, 2008. On July 14, 2008, the assigned administrative judge had a medical emergency that necessitated the cancellation of the hearing. The hearing was rescheduled to July 17, 2008, with both parties' consent, and the case was reassigned to me. I convened the hearing on said date. The Government offered Exhibits (GE) 1 and 2, which were received into the record without objection. Applicant testified and offered Exhibits (AE) A through O that was admitted into the record without objection. DOHA received the transcript of the hearing (Tr.) on July 28, 2008.

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. 13). The request and the attached documents are included in the record as Hearing Exhibits (HE) I through V. Applicant's counsel 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 May 21, 2008, Applicant admitted the factual allegations in ¶¶ 1.a through 1.c of the SOR and offered explanations in support of his request for a security clearance.

Applicant is 47 years old. He was born in Iraq and attended high school there. From September 1979 to September 1983, he attended an Iraqi university and graduated with a Bachelor of Science in Agriculture. As required by the Iraqi government, he served in its army from 1984 to 1990 after graduating from the university. After completing military service, he moved to Jordan for two years because he could not find a job in Iraq. When he returned to Iraq in 1993, he found a position as an agricultural engineer. In 1995 he married a woman, who was a U.S. citizen, residing in Iraq with her Iraqi parents. In 1998, he and his wife left Iraq and moved to the United States. (Tr. 51). In 1999, they divorced. He no longer communicates with her. (Tr. 54). Presently, he is working on a master's degree at a U.S. university. (Tr. 46).

Applicant obtained permanent U.S. residency in 1998. (Tr. 54). After arriving in the United States, he worked as a proof reader at a university. (Tr. 47). He became a naturalized U.S. citizen in August 2005. In December 2005, he returned to Iraq for the first time since leaving it in 1998. (Tr. 27; 48).

Both of Applicant's parents were born in Iraq and are deceased. His mother died in 1989 and his father died in July 2006. (Tr. 54). He is one of four children, all born in Iraq. He has one brother and two sisters. His brother, an engineer, is a resident citizen of Iraq and married. Applicant last saw his brother in Jordan in December 2006 at a family reunion after his father died. Applicant does not know where he lives and speaks to him very infrequently, the last time being about four months ago. (Tr. 33-34; 60).

Applicant's two sisters are residents and citizens of Iraq. One is married to an Iraqi citizen, who is an agricultural engineer. His other sister is divorced. Both sisters work in Iraqi hospitals. (Tr. 57). Prior to the December 2006 family gathering in Jordan, Applicant had not seen or spoken to his sisters or his brother-in-law since leaving Iraq in 1998. (Tr. 34; 59). All of his siblings were very happy when Saddam was ousted from the government. (Tr. 35-36).

Sometime in December 2006 after the family gathering, Applicant's brother received a death threat over the telephone from an unknown person. The brother immediately called Applicant, who then notified his commander. Two days later, the commander re-located Applicant to remove any potential harm. (Tr. 38-39; 64). His brother subsequently moved to Jordan. (Tr. 65). Applicant thinks his brother was singled out because Applicant had appeared on television discussing agricultural successes he achieved with the Iraqi farmers. (Tr. 62). Neither he nor his brother ever received any other threat. (Tr. 40-41). No one else in his family has ever received a threat. (Tr. 67). His family does not know what he presently does for a living. (Tr. 67).

After receiving his citizenship in August 2005, Applicant filed an Immigrant Petition for Relative in November 2005 for each of his three siblings, hoping to bring them to the United States. (AE B). He does not know the status of the Petitions, other than that they remain pending. (Tr. 36).

In December 2005, Applicant was hired as an agricultural advisor and engineer for a federal contractor that supports the U.S. military forces in Iraq. (Tr. 48). He subsequently received an interim Secret security clearance that allowed him access to classified information. (Tr. 44). During the tenure of his employment, he returns home to the United States for two weeks of vacation approximately every six months. (Tr. 42-44). While in Iraq, Applicant did not visit his family, even though he knew his father was very sick in 2006. (Tr. 55).

Applicant owns a condominium in the United States and has U. S. bank accounts. (Tr. 3). He does not own any property in Iraq. (Tr. 68). There is no derogatory information concerning his police or financial records. He has never been fired from a job. He has never been arrested. He has never used illegal drugs, or been involved in an alcohol-related incident. (GE 1).

Without including too many details in this opinion, I will summarize that his performance in Iraq, in direct support of the United States' war on terrorism, has been superior. A Foreign Service officer in charge of a reconstruction team stated:

[Applicant] is the most effective community organizer I have ever seen. With insurgents exploiting drought-ridden rural [province] as a base of operations, [Applicant] developed an agricultural strategy to counter the lure of insurgent pay-offs and overcome Saddam-era prejudices. He mentored diverse religious and ethnic leaders into joining in U.S. backed farm associations that offered unprecedented political unity and the benefit of collective economic bargaining. Thanks to [Applicant's] planning, dedication and courage, areas that were once insurgent strongholds and hotbeds of clan violence now see cooperative economic planning and agricultural efficiency. (AE L).

A Major in the U.S. Army wrote that Applicant's technical expertise, coupled with his innate understanding of the Iraqi culture and language has made him an invaluable asset to Coalition Forces." (AE M). In June 2008, Applicant received a Meritorious Honor Award from the Department of State for his "exceptional joint effort to move hundreds of farm families through the steps of organization, registration, funding and business planning that enable community-based institutions to promote profitable and peaceful co-existence." (AE O). Some of his monthly performance evaluations consistently grade him as "exceeding expectations." (AE J).

In June 2008, another economic chief of the reconstruction efforts wrote: "As a security cleared Foreign Service Officer entrusted with the protection of U.S. interest and information overseas in posts with the highest threats of attack and espionage, I can say that I fully trust [Applicant] to protect and defend the interests of the United States." (AE L).

There is no evidence in the record that while holding a security clearance in Iraq, Applicant breached any security policies or procedures.

Applicant credibly and sincerely asserted his pride of U.S. citizenship. He decided to apply for a position with the U.S. forces because he fully supported the ouster of Saddam and freedom for Iraq. "I felt like part of my responsibility to be part of the team, provide something, or I can do something there. I have the culture from there and I am a citizen here." (Tr. 28).

I take administrative notice of the facts set forth in the Hearing Exhibits, including the fact that 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 targeted 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, although there has been a decrease in violence since January 2001. "An improved security environment has resulted from the combined factors of Coalition troop surge and sustained presence, the declared ceasefire by Muqtada al-Sadr's Jaysh

al-Mahdi militia in August, improved Iraqi Security Forces proficiency, and increasing popular support for the actions of Iraqi Forces against AQI and other extremist groups.” (HE IV). Terrorist groups conduct intelligence activities as effectively as state intelligence services.

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 the applicant or proven by Department Counsel and has the ultimate burden of persuasion as to obtaining a favorable security clearance 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 adverse to an applicant 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 *a/so* 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 conditions that could raise a security concern and may be disqualifying. Department Counsel argued that the evidence in this case established two of them:

(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;¹ and,

(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.

Since 1998, Applicant has had some contact with his three siblings, who are resident citizens of Iraq. None of them have any government connection or other

¹ 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).

position in which they could otherwise benefit from his access to sensitive information or technology. However, in December 2006, his connection to his brother created a potential conflict of interest between his security obligations and a desire to help his brother, when the brother was confronted with a death threat. Given that situation, (albeit an isolated one) security concerns are raised under both disqualifying conditions as there may be a possibility that hostile forces might seek protected information from Applicant by threatening harm to his family members in Iraq.

The Government produced substantial evidence of these disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove mitigation of the resulting security concerns. AG ¶ 8 provides conditions that could mitigate security concerns. Those with potential application in this case:

(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.;

(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; 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.

The positions and activities of Applicant's family members in Iraq do not involve the government or military, and they would have no interest in acquiring protected information. Only their physical presence creates the potential that their interests could be threatened to the point that Applicant would confront a choice between their interests and those of the United States. Because they are strongly opposed to terrorism in Iraq, the likelihood of such a situation is substantially reduced. The Iraqi government is a U.S. ally that does not pose an intelligence risk through Applicant's family members, who support the Iraqi and coalition efforts to defeat terrorists and establish a working democracy. However, AG ¶ 8(a) is given only partial application as a result of the previous incident involving Applicant's brother.

Applicant produced very significant evidence establishing mitigating condition of 8(b). Based on his relationship and depth of loyalty to the U.S., 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 1998 and did not return to Iraq until his employment with the U. S. armed forces in 2005. He went to Iraq to support the U.S. troops out of his sense of duty and

patriotism, and has placed his life at risk during some of his operations. He owns real estate and holds bank accounts in the United States. He is pursuing a master's degree at a U.S. university. In contrast, his Iraqi interests are minimal. He does not own property in Iraq and has very limited contact with three siblings living there. The record does not contain any evidence that he has connections or contact with any people other than his family.

Applicant has had very limited communication with his two sisters since 1998. The last time he spoke to them was in December 2006 in Jordan. He speaks to his brother infrequently, although on an on-going basis. Based on his lack of communication with his sisters since December 2006, mitigating condition 8(c) has some application as to them. It does not have application to his brother with whom he has infrequent, but regular contact.

“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 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) the 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.”

According to 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 ties to the U.S. relative to his [or her] ties to a foreign country; his or her 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 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 siblings to obtain such information. Second, his brother received a death threat because of Applicant's presence in Iraq and assistance with the coalition forces. Third, he had numerous

connections to Iraq before he immigrated to the United States in 1998. Following his birth, he spent his formative years there. He was educated at an Iraqi university, and was conscripted into its army. Later, he worked there for several years as an agricultural engineer. Fourth, three siblings remain resident citizens of Iraq, for whom he is trying to obtain resident alien status in the United States.

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 10 years, and has been a naturalized citizen for three years. Out of his sense of patriotism and love for the United States, he joined with the U.S. armed forces, as an Arabic-speaking linguist and agricultural engineer for a federal contractor, and willingly placed himself in positions that pose physical risks. His ties to the United States, which he refers to as his country, are much stronger than his connections to three siblings in Iraq, two of which he barely contacts. There is no evidence he has ever taken any action that could cause potential harm to the United States, and he appropriately handled the situation that involved a threat to his brother. He takes his loyalty to the United States seriously, and he has worked diligently for a defense contractor for several years in an important capacity. His supervisors assess him as loyal, trustworthy, conscientious, and responsible, giving him excellent evaluations and praising his dedication to the cause of freedom in Iraq. He is an excellent employee and U.S. citizen. After leaving Iraq in 1998, he never returned, until he began working with the U.S. troops in December 2005. No witnesses recommended denial of his security clearance. There is not any derogatory information about him in the record.

Applicant held a security clearance during his tenure with the U.S. forces without any indication that he breached security policies or procedures. While that fact is not normally to be considered as a significant factor in granting a clearance, the Appeal Board ruled in ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006) as follows:

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 that 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 national 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.² 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 security concerns arising from 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.c: For Applicant

Conclusion

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

SHARI DAM
Administrative Judge

² 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.