



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



In the matter of:)
)
) ISCR Case No. 07-12358
)
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: Helal A. Farhat, 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 May 9, 2005, Applicant submitted his Security Clearance Application (SF 86). On February 29, 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 in writing on March 25, 2008, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed

on April 17, 2008. The case was originally assigned to me in April 2008 and then reassigned to another administrative judge on June 19, 2008. DOHA issued a Notice of Hearing on June 25, 2008, scheduling the hearing for July 15, 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, and reassigned to me. I convened the hearing on said date. The Government offered Exhibits (GE) 1 and 2 into evidence, which were admitted without objection. Applicant testified and offered Exhibits (AE) A through J into evidence that were admitted without objection. His wife also testified. DOHA received the transcript of the hearing (Tr.) on July 25, 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. 14-15) 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 March 25, 2008, Applicant admitted the factual allegations in ¶¶ 1.b through 1.f of the SOR. He denied ¶ 1.a, noting that his mother died in December 2007.

Applicant is 58 years old. He was born in Iraq and went to high school there. From September 1969 to June 1971, he attended a teacher's college in Iraq and graduated with a teaching degree. (Tr. 26). As required by the Iraqi government, he served in its army for a year and a half after graduation from college. After completing military service, he taught elementary school in Iraq from September 1973 to June 1980. (GE 2).

Applicant "always had a dream to come to the United States." (Tr. 106). In July 1980, Applicant left Iraq and went to Germany. At the time, he was distressed over the political and religious atmosphere in Iraq under Saddam Hussein. (Tr. 89). After being granted asylum as a refugee in the United States, he arrived here in April 1982. (Tr. 29). In October 1986, he married his wife, a U.S. citizen. They have two children, both born in the United States. He became a naturalized U.S. citizen in December 1987. He owned and operated a gas station from 1993 to 2003, and an ice cream store that his wife operated from 2003 to 2006. (Tr. 104).

Applicant's parents were born in Iraq. Both are deceased. His father, who worked in an oil refinery, died in 1994, and his mother, a homemaker, died in December 2007.

He is one of eight children, all born in Iraq. He has five brothers and two sisters. Three brothers are resident citizens of Iraq. They are married to Iraqi citizens and have children. One of those brothers is a retired music teacher. Applicant speaks to him once every two to three months. (Tr. 36). Another brother, age 61, works in an oil refinery in Iraq. He has a son who lives in the United States. Applicant has had very limited communication with this brother. (Tr. 39). However, Applicant has seen his nephew a couple times in the United States. His 56-year old brother is a welder for an oil company. He lived with his mother until she died in December 2007. When Applicant phoned his mother, he sometimes spoke to this brother. Applicant has not seen any of these brothers since leaving Iraq in 1980. (Tr. 42). He had not seen his mother since leaving Iraq in 1980. (Tr. 48).

Another brother is a citizen and resident of the United Kingdom. He is married and has two children. He owns a dry cleaning store. Applicant saw this brother in December 2005 when Applicant and his family vacationed in London for a week. Prior to this visit, Applicant had not seen this brother since leaving Iraq in 1980. (Tr. 44). He does not speak to his brother very often, but spoke to him after his mother died. While in England in 2005, he asked his brother to tell his family in Iraq that he would not have contact with them in the future because of the potential problems such communication could have with his job. (Tr. 96).

Applicant's fifth brother lives in Sweden. He has not seen this brother since 1980. He has not maintained contact with his brother over the years, but did speak to him after his mother died. He does not know what this brother does for a living. (Tr. 46-47).

Applicant has two sisters who are citizens and residents of Iraq. Both are married to Iraqi citizens and have children. Their husbands work in the oil refineries. One of his sisters is a teacher and the other is a housewife. Applicant has not seen either sister since 1980. (Tr. 35). He had periodic contact with them if they were visiting his mother when he telephoned her. (Tr. 49-54).

In February 2004, Applicant was hired as a linguist to support the U.S. military forces in Iraq. Prior to going to Iraq, he took a polygraph test and underwent medical evaluations. He subsequently received an interim secret clearance that gave him access to classified information. (Tr. 87). In April 2004, he returned to Iraq for the first time since leaving it in July 1980. One of his first assignments was to work in the field on various missions. After being involved in an explosion, he transferred to a detainee center where he translated information from the detainees. (Tr. 63). From that point until he left Iraq in November 2007, he continued working as a translator in detention centers. After going to Iraq in April 2004, he returned home to the United States for two week intervals, approximately every six months during his employment. (Tr. 84-86). In November 2007, his employer gave him a leave of absence, pending the outcome of this proceeding. (Tr. 80).

While in Iraq, Applicant did not visit his family. He called them periodically, in particular his mother who became ill. His commander knew Applicant had family in Iraq

and approved Applicant's phone calls to them. (Tr. 71-72). Applicant noted that all calls are monitored in Iraq. None of his family members knows what role he performs for the U.S. government, nor do they ask. (Tr. 96). His family does not sympathize with the terrorist organizations that oppose the United States. (Tr. 81). Applicant never left the U.S. camps while assigned there. (Tr. 68; 73).

Applicant's wife credibly testified. She affirmed Applicant's tremendous pride in his U.S. citizenship and desire to help this nation. She does not believe he could be influenced or coerced into doing something that would harm the U.S. interests because his loyalties are solely with his immediate family in the U.S. and this country. (Tr. 113-114).

Applicant owns a house in the United States and has U. S. bank accounts. (Tr. 103). He does not own any property in Iraq. (Tr. 55). There is no derogatory information in the record 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 terror has been superior. In August 2004, Applicant's supervisor, from June 2004 to August 2004, at a detention center wrote, "Displaying an exemplary attitude and an acute attention to detail, [Applicant's] efforts were invaluable and led to further detention of potential elements of terrorist organizations!" (AE F). In February 2005, a Technical Sergeant in the Air Force submitted a Letter of Evaluation on behalf of Applicant, detailing nine areas of accomplishment. In the concluding sentence, he said, "As you can see, [Applicant] is a dedicated professional, with unsurpassed excellence that contributes to mission success!" (AE D). Applicant's site manager, from December until August 2007, commented, "A consistently superior performer, he went above and beyond his normal duties significantly contributing to the success of the Defense Intelligence Agency cell at the detention center." (AE G). In May 2008, a team leader for Applicant's unit, stated, "As one of the few linguists of actual Iraqi descent in the office he was used immensely to obtain actual time sensitive intelligence needed to accomplish the mission . . . His honorable, faithful, and patriotic service in a difficult and demanding combat environment reflects great credit upon himself." (AE H)

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

Applicant credibly and sincerely asserted his pride of U.S. citizenship and desire to resume his work with the U.S. Army. The director of the linguist operations, who has worked with Applicant from October 2005 into May 2008, requested that "as much consideration be given as possible in reinstating [Applicant's] clearance. The government is currently in need of [Applicant's] unique skills and experience and is anxiously awaiting his return." (AE J). Applicant testified:

"I love this country and I took this job as volunteer job, and I know there is a risk going there. But I love into this country and I promise myself since I enter this country I will be very very loyal to this country. And in any time this country needs me I will be there to help this country. Because I didn't have country in 1982. This country allow and accept me as a refugee, and I came over here. And I promise since then, and God bless me, when time came and I volunteered to take this job and go over there." [Sic] (Tr. 81-82).

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.

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 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 an 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 county 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 1980, Applicant has had some telephone contact with his mother, and five siblings, who are residents and citizens of Iraq. After he started working in Iraq in 2004, he telephoned his elderly mother periodically. If any of his siblings were visiting her, he also spoke to them. His commander had full knowledge of, and approved, these telephone contacts. After his mother's death in December 2007, he ceased contact with his family, knowing that such communication could jeopardize his employment. Applicant's connections to his family in Iraq could create a potential conflict of interest between his security obligations and his desire to help them, only in a situation wherein they were taken hostage or otherwise threatened with harm if he did not cooperate. None of them have any government connection or other position in which they could otherwise benefit from his access to sensitive information or technology. However, under either disqualifying condition, security concerns in this case could arise in connection with the potential 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 are:

(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

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).

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 interest 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. Hence, AG ¶ 8(a) has some application.

Applicant produced very significant evidence establishing mitigating condition 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 1982 and did not return to Iraq until his employment with the U. S. Army in 2004. His wife and children, to whom he is very dedicated, are U.S. citizens, residing in the United States. He owns property and holds bank accounts in the United States. He owned and operated two businesses here before starting his position with a federal contractor. He does not own property in Iraq and has had very limited contact with his family members living there since 1980. While in Iraq, he willingly risked his own life to support the U.S. troops. There is no evidence that he has connections or contact with any people other than his family members.

Applicant attempted to establish mitigating condition 8(c) through description of his contacts and communications with his family members as infrequent and very casual. Although he has ceased communication with his family in Iraq since his mother's death in December 2007, his previous contacts with her and his siblings were sporadic, but nonetheless on-going. Hence, 8(c) cannot be given full application.

“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 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. Three 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, he had numerous connections to Iraq before he immigrated to the United States in 1982. Following his birth, he spent his formative years there. He was educated at an Iraqi college and was conscripted into its army. Third, five of his siblings and their families remain resident citizens of Iraq.

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 26 years, and has been a naturalized citizen for about 15 years. His spouse is a native-born U. S. citizen, as are his children. Out of his sense of patriotism and love for the United States, he joined the U.S. troops as an Arabic-speaking linguist. His ties to the United States, which he refers to as his country, are much stronger than his ties to his five siblings living in Iraq. There is no evidence he has ever taken any action that could cause potential harm to the United States. 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 for the U.S. military. 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 family member, employee and U.S. citizen. After leaving Iraq in 1982, he never returned until he worked with the U.S. forces in April 2004. He has not seen those family members living in Iraq since 1980. No witnesses recommended denial of his security clearance. There is not any derogatory information about him in the record.

Applicant held a Secret security clearance during his tenure with U.S. military forces without any indication that he breached security policies or procedures. While that fact is not normally 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, including Applicant's commendable performance as a translator in Iraq, I conclude Applicant has fully mitigated the security concerns pertaining to foreign influence.² Overall, the record evidence leaves no doubt as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline B.

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.f: For Applicant

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.

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