



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



In the matter of: )  
 )  
----- ) ISCR Case No. 07-12405  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jennifer I. Goldstein, Department Counsel  
For Applicant: William F. Savarino, Esquire

September 29, 2008

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Questionnaire for National Security Positions, on August 31, 2007. On February 20, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (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 a March 22, 2008, and requested a hearing before an Administrative Judge. The case was assigned to another Administrative Judge on June 25, 2008. The matter was transferred to the undersigned on July 7, 2008. A notice of hearing on July 16, 2008, and the hearing was held on August 8, 2008. The Government presented two exhibits, referred to as Government Exhibits 1 and 2, which were received without objection. Applicant presented three exhibits, referred to as Applicant's Exhibits A through C, which were received without objection. The Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on August 14, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

## **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts concerning the current political conditions in Iraq, Syria and Jordan. Applicant had no objection. (Tr. p. 18 ). The request and the attached documents were not admitted into evidence, but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

### **FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 53 years of age and married. He is employed as a translator/linguist or interpreter for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in Arbil, Iraq. This area of Iraq is called the "Kurdistan Region" because it is located in the north and is controlled by the Kurds. In 1975, the Applicant left Iraq and moved to Canada where he studied English. Although he wanted to come directly to the United States, he did not have permission to do so. In early 1978, at the age of 23, the Applicant snuck into the United States illegally. He was arrested and spent about a week in jail for illegal entry. He told United States officials that he was a "Kurd" and he was seeking asylum in the United States because of the persecutions by Saddam Hussein's regime. The Applicant was granted a I-94 Visa with permission to work, and was allowed to stay in the United States. He ultimately applied for amnesty and was granted an alien card. He became a naturalized United States citizen in May 1995.

The Applicant married a relative of his from Iraq in May 1997. She obtained her naturalized United States citizenship in 2003 or 2004. They have two children who are native born American citizens. The Applicant's wife has a sister and her husband that reside in the United States. They are currently green card holders awaiting eligibility to apply for citizenship.

From 1997 through 2003, the Applicant operated and owned a 7-Eleven franchise. In 2003, he wanted to help the United States in their effort to liberate Iraq. Two of the Applicant's brother's had been tortured by Saddam Hussein's regime, one of whom was sentenced to death, the other was imprisoned by security forces and beaten for ten continuous days for being "Kurds". The Applicant, with a deep desire to help the United States against the regime in Iraq, applied for and obtained a job as a linguist. He also applied for a security clearance and was granted an interim clearance in 2003. From April 2003, to 2008, the Applicant was assigned to work in Iraq for the United States Army. He traveled to Kuwait several times in 2003, and also to Qatar in 2005.

Without saying more, the Applicant is essentially the eyes and ears for the military. (Tr. p. 55). The Applicant's job is dangerous. In the past, the Applicant has been shot at and had weapons launched in his direction. Applicant testified that it was common knowledge in Iraq that the bounty on a soldier was \$25,000.00 and the bounty on an interpreter was \$50,000.00 because they are considered traitors. (Tr. p. 67). All of the Applicant's work associates are United States citizens.

The Applicant has a number of relatives who are citizens and residents of Iraq. Both his mother and father are deceased. He has four brothers. One of his brothers is a citizen and resident of Iraq. He is a lawyer who is managing family land that was inherited. Another brother is a citizen of Iraq who resides in Canada. He and the Applicant do not get along, and the Applicant does not know what he does for a living. He has two brothers who are citizens of Iraq, but who are residents of Germany. One of them lives between Germany and the "Kurdish region" and is collecting unemployment from Germany. The other brother is on the welfare system in Germany. The Applicant has not communicated with him since 1996.

The Applicant has five sisters. One of his sisters is a citizen of Iraq, but resides in Germany. She works for the newsstand. Her spouse is a member of the Kurdish parliament in Iraq who has assisted the United States Government in their mission. He has a sister who is a citizen of Iraq that resides in England. She is a homemaker. He has a sister who is a citizen of Iraq who resides in Germany. The Applicant does not know what she does for a living. He has a sister who is a resident of Syria who is a citizen of Iraq. She is married to a farmer who has citrus fields. The Applicant has not spoken to her since 2002. He has a sister who is a citizen of Iraq who resides in Jordan. She works for the United Nations, UNICEF. Her husband lives with her but he is unemployed.

The Applicant has a father-in-law who is a citizen and resident of Iraq. He is a farmer. His son, the Applicant's brother-in-law, is also a farmer. He has a sister-in-law who is living in California and babysitting for a living. His mother-in-law is deceased. The Applicant has two brother-in-laws. One of them works for an American company in Iraq. The other one resides in Germany and works for a janitorial service. Both are married to women who are homemakers. The Applicant also has two sisters-in-law who are both housewives. The Applicant's relatives do not know what he does for a living because he has not told them.

The Applicant used to speak to several of his relatives in Iraq about once a month or once every other month to his relatives until he received the SOR, when he ceased all communications/contact whatsoever. He has no intent of resuming any contact with his foreign relatives while he is employed in his present capacity. In the event that he is contacted by them or any one else for any reason that is not appropriate, he will report it to his unit.

The Applicant's wife speaks to her 80 year old father on a monthly basis and on occasion to her brother in Iraq. In the past, she has sent medicine to her father.

From 1992 to 1996, the Applicant traveled to Iraq or what he refers to as "occupied Kurdistan" on five or six occasions. From 1995 to 2002, the Applicant did

not travel to Iraq at all. Applicant traveled to Syria in 2002, and then from Syria to Iraq to pick up his wife and children who were visiting their grandmother, his mother-in-law who had cancer, and had not seen her daughter since 1997. By traveling to Syria and then into Iraq the Applicant was able to avoid problems because it was controlled by the Kurdish regions and he would not be in danger. The Applicant used his United States passport to travel.

All of the Applicant's financial assets are located in the United States. His assets include two houses, a business partnership, bank accounts and a hundred thousand dollars in cash.

Letters of recommendation from high ranking military officers with whom the Applicant has worked indicate that the Applicant's work performance has been outstanding. His linguistic skills, cultural advice, knowledge of the area and understanding of Arab and Persian perceptions and attitudes toward United States policy objectives been key to their successful mission. The Applicant has been a critical strategic asset and a valuable member of their team and is highly recommended for future positions of responsibility with the Department of Defense. (Applicant's Exhibit A).

Applicant received several Certificates of Achievement from the Commander of his unit. They are in recognition of his untiring efforts and the performance of his duties for the Department of Defense. (Applicant's Exhibit B).

Numerous affidavits from soldiers who have worked with the Applicant in Iraq as well as other Linguists who work for the Department of Defense attest to the Applicant's hardworking, dependable, responsible, honest and effective nature. He considers himself like a soldier defending the United States in his capacity as a linguist for the military. He has helped to bridge the cultural difference by teaching American deployed to Iraq the subtleties of working with the locals. His efforts have helped to ensure the safety of our troops and the successful operation of the mission. (Applicant's Exhibit C).

It is appropriate to discuss the relationship between Iraq, and to a lesser extent Syria and Jordan, and the United States at this time. With regard to Iraq, in 2003, a United States led coalition removed Saddam Hussein and his Ba'athist regime from power. In March 2006, Iraq's new government took office after being freely elected by the Iraqi people. However, violence continues to engulf the country. This violence has been fueled and perpetrated by Al Qaida terrorists, Sunni insurgents, and Shiite militias and death squads. The State Department has specifically stated that: "The risk of terrorism directed against United States citizens and interests in Iraq remains extremely high". Furthermore, the State Department has posted the following warning: "Attacks against military and civilian targets through Iraq continue, including in the International (or "Green") Zone. Targets include hotels, restaurants, police stations, checkpoints, foreign diplomatic missions, and international organizations and other locations with expatriate personnel. Such attacks can occur at any time." Kidnappings still occur: the most recent kidnapping of an American citizen occurred in August 2007. There are United States substantiated reports of human rights abuses, including a "pervasive climate of violence; misappropriation of official authority by sectarian, criminal and insurgent groups; arbitrary deprivation of life; disappearances; torture and other cruel, inhuman or degrading treatment or punishment."

Syria, since March 1963, has been ruled by an authoritarian regime. Syria is currently included on the Department of State's list of State Sponsors of Terrorism due to the presence of several terrorist groups in Syria. According to the Department of State, the Syrian Government continues to provide political and material support to Hezbollah and Palestinian terrorist groups. Several terrorist groups base their external leadership and maintain offices in Damascus. In addition Syria permits Iran to transfer weapons and supplies through Syria to Hezbollah in Lebanon. United States officials criticized Syria for permitting shipments of arms from Iran to Hezbollah in Lebanon that fueled the conflict between Lebanon and Israel in July 2006. Similarly, Syria is "one of the primary transit points for foreign fighters entering Iraq. The preliminary findings of a UN investigation have indicated that the Syrian Government was involved in the February 2005 assassination of former Lebanese Prime Minister Hariri, who actively opposed Syria's influence on Lebanese political affairs. A travel warning is in effect for Syria following September 12, 2006, attacks on the United States Embassy in Damascus. In 1998 and 2000, mobs in Damascus attacked the United States Ambassador's Residence and the United States Embassy respectively. Due to Syria's active and passive support of terrorism in the Middle East, President Bush signed an executive order implementing sanctions on May 11, 2004. These sanctions prohibit the export to Syria of products of the United States other than food or medicine, and prohibit any commercial aircraft owned or controlled by the Syrian Government from taking off from or landing in the United States. The Department of State describes the Syrian Government's human rights record as "worsened." The following human rights abuses have been documented by the State Department as occurring in Syria: absence of right to change government, arbitrary or unlawful deprivation of life, torture in prison, poor prison conditions, arbitrary arrests and detentions, absence of rule of law, severely restricted civil liberties, limited freedom of religion, government corruption and lack of transparency, and violence against women.

Jordan is a small country located in the Middle East with a constitutional monarchy and a developing economy. Jordan has followed a pro-Western foreign policy and has had close relations with the United States for six decades. However, the State Department notes that Jordan's human rights record continues to reflect some problems. Problems include: torture, arbitrary arrests, prolonged detention, overcrowded prison with poor sanitary conditions, denial of due process, infringement on citizen's privacy rights, political detainees, and restrictions on freedom of speech, press, assembly, association, and movement. The United Nations reports that torture by police and security forces is widespread and allegations of torture have been substantiated by forensic medical evidence. Despite Jordan's aggressive pursuit of terrorists, drafting of counter-terrorism legislation, prosecution of terrorism cases including both Al-Qaida and non Al-Qaida defendants, and investigation and disruption of terrorist plots, the threat of terrorism remain high in Jordan. Terrorists in Jordan often do not distinguish between United States Government personnel and private citizens and specifically target areas frequented by Westerners. Terrorists within Jordan use overt, covert and clandestine activities to exploit and undermine United States national security interests. Terrorist organizations currently target the United States for intelligence collection through human espionage and by other means. Terrorist groups conduct intelligence activities as effectively as state intelligence services.

## POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

### Foreign Influence

6. *The Concern.* 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.

#### Condition that could raise a security concern:

7. (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

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.

#### Conditions that could mitigate security concerns:

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.;

8. (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;

8. (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.

8. (d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

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.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign influence ad has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

## **CONCLUSIONS**



Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR.

Under Foreign Influence, Disqualifying Condition 7(a) *contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion* and, 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* applies.

However, the Applicant has provided compelling evidence to show that the following Mitigating Conditions also apply to this particular case, given his particular background: Mitigating Conditions 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.*; 8(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*; 8(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* and, 8(d) *the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority* also apply.

Although the Applicant has foreign family members in Iraq, Syria and Jordan who are residents and/or citizens of Iraq, the Applicant is not close to them and now has no contact with them whatsoever. There is no evidence of a close bond or strong evidence of affection. The Applicant's deep and abiding ties are here in the United States. All of his immediate family reside in the United States. All of his financial assets are in the United States. He is an American citizen. For the past thirty years he has worked hard to establish himself as a responsible, trustworthy, professional and loyal American citizen. His wife and children are all citizens and residents of the United States. His unique employment with the DOD, his assets, that include his homes, business and bank accounts are all in the United States. The Applicant has essentially cut all ties from Iraq when he moved to the United States and made it his permanent home for the past thirty years.

His relationship with his family in Iraq, Syria and Jordan, tenuous though it is, does create a heightened risk of foreign pressure or attempted exploitation because terrorists in the Middle East seek intelligence and are hostile to the United States' interests.

Iraq, Syria or Jordan are not safe places for anyone, that much is true. They are war zones. However, there is substantial evidence that the Applicant behaved in a

courageous and honorable way during his tour of duty in Iraq. Officers, senior non-commissioned officers, and enlisted soldiers from the military have submitted glowing written statements discussing the Applicant's activities in Iraq, his strong sense of integrity, and specifically his ability to safeguard classified information in a combat area.

Applicant established application of Mitigating Conditions 8(a), 8(b), 8(c), and 8(d). Based on his relationships and depth of loyalty to the United States, he can be expected to resolve any conflict of interest in favor of the United States interest. He has lived in the United States since 1978 until his employment with the Department of Defense in 2003. The Applicant has been a naturalized American citizens for over twenty years. His wife is a naturalized citizen and his children are native born Americans. He owns a two houses in the United States and has no financial interests of any kind in Iraq. He has limited contact with his family members living in Iraq and there is no evidence that he has connections or contact with anyone over there other than his family members.

It is noted that the current political situation in Iraq, Syria and Jordan elevates the cause for concern in this case. However, the evidence shows that the Applicant has no bond and affection with any foreign country or to any foreign individual or to any foreign Government in any way that could potentially cause the Applicant to become subject to foreign exploitation, inducement, manipulation, pressure, or coercion against the interests of the United States. Therefore, there is no possibility of foreign influence that exists that could create the potential for conduct resulting in the compromise of classified information. I find that the Applicant is not vulnerable to foreign influence. Accordingly, I find for the Applicant under Guideline B (Foreign Influence).

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline B.

### **FORMAL FINDINGS**

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.  
Subparas. 1.a.: For the Applicant  
Subparas. 1.b.: For the Applicant  
Subparas. 1.c.: For the Applicant  
Subparas. 1.d.: For the Applicant  
Subparas. 1.e.: For the Applicant

### **DECISION**

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson  
Administrative Judge