



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-13602
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

September 12, 2008

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns under Guideline B (Foreign Influence), raised by Applicant's ties to Iraq. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted his security clearance application on April 26, 2008. On March 19, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny his application, citing security concerns under Guideline B. 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 an undated document and requested a decision on the record without a hearing. DOHA received his answer on April 15, 2008. On April 29, 2008, Department Counsel requested a hearing (Tr. 16; Hearing Exhibit (HX) II). (HX I is discussed below.) Department Counsel was ready to proceed on May 12, 2008, and the case was assigned to me on May 14, 2008. Scheduling of the hearing was delayed by Applicant's deployment to Iraq. DOHA issued a notice of hearing on July 23, 2008, scheduling the hearing for August 19, 2008. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified on his own behalf and submitted Applicant's Exhibits (AX) A through D, which were admitted without objection.

I granted Applicant's request to keep the record open until September 19, 2008, to submit additional documentary evidence. He timely submitted AX E, F, and G, which were admitted without objection. Department Counsel's comments concerning AX E, F, and G are attached to the record as HX III. DOHA received the transcript (Tr.) on August 27, 2008. On September 2, 2008, Applicant sent an email stating he had no further evidence to submit (HX IV). The record closed on September 2, 2008.

Administrative Notice

Department Counsel requested that I take administrative notice of relevant facts about Iraq (HX I). I took administrative notice as requested by Department Counsel (Tr. 23). The facts administratively noticed are set out below in my findings of fact.

Evidentiary Ruling

Department Counsel offered GX 2, DOHA interrogatories that included a personal subject interview extracted from a report of investigation, without calling an authenticating witness as required by the Directive ¶ E3.1.20. I explained the authentication requirement to Applicant and he waived it (Tr. 31). Based on his affirmative waiver of the authentication requirement, I admitted GX 2 (Tr. 32).

Findings of Fact

In his answer to the SOR and at the hearing, Applicant admitted the allegations and offered explanations. His admissions are incorporated in my findings of fact.

Applicant is a 43-year-old linguist employed by a defense contractor. He was educated in Iraq, where he received a bachelor's degree in English literature. He worked as a linguist and program researcher for the Iraqi National Congress, an agency funded by the U.S. and composed of political groups opposed to Saddam Hussein, from March 1994 to August 1996 (Tr. 40, 46-48). His job was to translate English-language television broadcasts such as CNN and the BBC. He worked for the Iraqi National Congress because it offered a well-paying job, not for political reasons (Tr. 47-48).

When persons associated with the Iraqi National Congress were threatened by Saddam Hussein, Applicant was evacuated by the U.S. military to Turkey and then to Guam in September 1996 (GX 2 at 11). While in Guam he volunteered to be a translator for the refugees from Iraq (Tr. 40). He was granted political asylum in the U.S. in February 1997.

Applicant married a U.S. citizen in August 2000, and he became a U.S. citizen in February 2006. He and his wife have two children, ages seven and six. One of his sons is autistic and requires considerable attention (Tr. 70). He has two stepchildren from his wife's first marriage, ages 19 and 17. His wife does not work outside the home. They live in the house owned by Applicant's wife, which she acquired as part of a divorce settlement (Tr. 68).

Applicant was briefly employed by a defense contractor from April to June 2006, but was terminated when his application for an interim clearance was denied (GX 2 at 7). The denial was based on concerns about his travel to Iraq in March 2005 without a passport. He subsequently established that he traveled to Iraq using a travel document issued by the Department of Homeland Security in lieu of a passport (AX B). He received an interim clearance in December 2006 (Tr. 6).

Applicant has worked for his current employer since January 2007 (Tr. 42) and has been deployed to Iraq since August 2007. His duties involve translation of materials associated with the capture of high profile criminals who direct or conduct acts of violence against Coalition Forces. His team chief regards him as talented and completely loyal (Answer to SOR). His current site manager describes him as having an "overwhelming sense of duty" and so skillful that he is sought out for "hot" issues and special projects (AX F). His detachment chief describes him as "an inspiring example of selfless service" who has performed flawlessly (AX G). He received a certificate of appreciation for his performance in March 2008 (AX D). He also has received three unit coins, given as traditional military expressions of appreciation by U.S. military units (Tr. 74).

Applicant's family members live in the Kurdish region in northern Iraq, an area he considers relatively safe (Tr. 43, 66-67). None of Applicant's family members are connected to the government of Iraq. He does not work near his family and is not allowed to visit them. His family members believe he is living and working in the U.S. (Tr. 44).

Applicant's parents are citizens and residents of Iraq. His father is a retired truck driver and his mother is a homemaker (Tr. 53-54; GX 2 at 10). His parents are both 80 years old. He traveled to Iraq in March 2005 for three weeks to visit his parents, after not seeing them for nine years, because they are elderly, he missed them, and he was not sure when he would have another opportunity to visit them (GX 2 at 3).

Applicant's three sisters are citizens and residents of Iraq, and all three are homemakers. The husband of one sister owns a small restaurant, one is a truck driver, and one is a crane operator (Tr. 60-63; GX 2 at 10-11).

Three of Applicant's five brothers are citizens and residents of Iraq. Two brothers live with their parents (Tr. 54). One of these two brothers sells clothing and the other works in a bank (Tr. 56, 59). The third brother is married and is a cab driver (Tr. 54-55).

Two of Applicant's brothers left Iraq as refugees. One brother now lives in Germany and works in a fast food restaurant (Tr. 58). The other brother is a citizen and resident of the Netherlands, and he is employed by a seafood company (Tr. 56-57).

All of Applicant's married siblings have children, some of whom are adults. He has about 12 nieces and nephews in Iraq. None of his siblings or their children are connected to the Iraqi government.

Applicant works in a military compound and is not allowed to leave the compound or to accompany troops on combat missions (Tr. 67). He contacts his family by telephone or by email, but he uses the telephone only when he is in the U.S. He does not call his family from Iraq (Tr. 64). If his family calls his home in the U.S. while he is deployed, his wife tells them he is "at work," but she does not tell them where he is (Tr. 64).

When Applicant was interviewed by a security investigator in December 2006, he was contacting his parents and the two brothers who live with them about once a month by telephone, and he was contacting his two married brothers once or twice a month. He did not maintain regular contact with his sisters (GX 2 at 3). Since his deployment, Applicant's family contacts have been less frequent. He last talked to his parents in December 2007 (Tr. 67).

I have taken administrative notice of the following facts. In 2003, a U.S.-led coalition of military forces removed Saddam Hussein and his Ba'athist party from power. A new Iraqi constitution was adopted in 2005, establishing a constitutional democracy and guaranteeing all Iraqis basic human rights. In March 2006, a freely elected government took office. The U.S. government strongly supports the government of Iraq with military forces and economic assistance. The policy of the U.S. is to help Iraq build "a constitutional, representative government that respects the human rights of all Iraqis and has security forces capable of maintaining order and preventing the country from becoming a safe haven for terrorists and foreign fighters."¹ Weak performance by the Iraqi government in upholding the rule of law has resulted in widespread human rights abuses, including: "a pervasive climate of violence; misappropriation of official authority by sectarian, criminal, terrorist and insurgent groups; arbitrary deprivation of life; disappearances; torture and other cruel, inhuman or degrading treatment or punishment."² Widespread violence, principally inflicted by insurgent and terrorist

¹ U.S. Dept. of State, *Background Note: Iraq*, Feb. 2008 at 8.

² U.S. Dept. of State, *Country Reports on Human Rights Practices – 2007: Iraq*, Mar. 11, 2008 at 1.

groups, remains a serious problem. Although there is no evidence that Iraq conducts intelligence operations against the U.S., terrorist groups operating in Iraq target U.S. citizens and U.S. interests in Iraq.³

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s over-arching adjudicative goal is a fair, impartial and common sense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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.

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination as to the loyalty of the applicant. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines

³ U.S. Dept. of State, *Country Specific Information, Iraq*, Jan. 22, 2008 at 2.

presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline B, Foreign Influence

The SOR alleges Applicant's mother, father, brothers, and sisters are citizens and residents of Iraq (SOR ¶¶ 1.a and 1.b); he traveled to Iraq in March 2005 to visit his parents (SOR ¶ 1.c); and he was a translator for the Iraqi National Congress from 1994 to 1996 (SOR ¶ 1.d). The security concern under this guideline is set out in AG ¶ 6 as follows:

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.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Nevertheless, the nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are

vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

Applicant's travel to Iraq in March 2005 was solely to visit his aging parents. His foreign travel has no independent security significance. See ISCR Case No. 02-26978 (App. Bd. Sep 21, 2005).

Applicant's employment by the Iraqi National Congress was not a political act. It occurred while he was a citizen and resident of Iraq. The organization was financed and supported by the U.S. to orchestrate the overthrow of Saddam Hussein, and it no longer exists. Applicant's employment by the Iraqi National Congress raises no enumerated disqualifying conditions, but it is relevant to his current vulnerability to exploitation, pressure, or coercion by former members of the Ba'athist party or its sympathizers. His vulnerability based on former employment is discussed below under the whole person concept.

Two disqualifying conditions under this guideline are relevant to this case. First, a disqualifying condition may be raised by "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." AG ¶ 7(a). Second, a disqualifying condition may be raised by "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." AG ¶ 7(b).

The crux of this case is Applicant's family ties to Iraq. The totality of Applicant's family ties as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). The presence of Applicant's many family members, especially his parents and siblings, in Iraq creates the "heightened risk" contemplated by AG ¶ 7(a). The widespread violence among the various terrorist, insurgent, and criminal elements raises the potential conflict of interest contemplated by AG ¶ 7(b). I conclude both of these disqualifying conditions are raised.

Since the government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 7(a) and (b), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Security concerns under this guideline can be mitigated by showing that “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.” AG ¶ 8(a). Applicant has numerous family members in Iraq, maintains contact with his parents and brothers, and has feelings of affection and obligation for them. Although the U.S. and Iraq are allies, the level of violence instigated by terrorists and insurgents in Iraq is high. Applicant believes the Kurdish region of Iraq where they live is relatively safe, but his family is still at significant risk. I conclude AG ¶ 8(a) is not established.

Security concerns under this guideline also can be mitigated by showing “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.” AG ¶ 8(b). Applicant’s family ties are not “minimal,” but he has developed “deep and longstanding relationships and loyalties in the U.S.”

Applicant has been married to a U.S. citizen for more than eight years. He has two children and two stepchildren who are U.S. citizens. He has been a U.S. citizen since February 2006. His home, family, and financial resources are in the U.S.

Applicant has been employed by defense contractors since April 2006 and deployed as a translator for the U.S. forces since August 2007. He volunteered for arduous duty in a combat zone, leaving behind his American family, including his autistic son. He has handled numerous sensitive documents without incident. His supervisors have been impressed by his loyalty, “overwhelming sense of duty,” and “selfless service.” He has concealed his presence in Iraq from his Iraqi family members. His deployment has made it difficult to keep in contact with his family members in Iraq, including his aging parents, but he has meticulously adhered to the constraints of his job. He has demonstrated his loyalty to the U.S. by his actions. See ISCR Case No. 07-00034, 208 WL 681980 at *2 (App. Bd. Feb. 5, 2008) (proven record of action in defense of U.S. “very important”); ISCR Case No. 04-12363, 2006 WL 2725061 at *2 (App. Bd. Jul. 14 2006) (Applicant “invaluable in the war on terrorism”). I conclude AG ¶ 8(b) is established.

Whole Person Concept

Under the whole person concept, an 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. An 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept. Some of the factors in AG ¶ 2(a) were addressed above, but some warrant additional comment.

Applicant is a mature adult who demonstrated an affinity for the Western culture by studying English literature while a college student in Iraq. He fled Iraq to escape from the terrorist and insurgent elements now trying to undermine the government. He met and married a native-born American three years after entering the U.S. as a refugee.

Applicant volunteered to serve with U.S. forces in a combat zone. While his duties do not subject him to direct combat operations, his former employment with the Iraqi National Congress may well subject him to personal danger from former Ba'athist party members and sympathizers if his presence in Iraq were revealed.

Applicant was very candid, sincere, and credible at the hearing. He understands that a security clearance creates a special obligation based on trust. In his closing statement, he demonstrated his understanding that a clearance is a beginning, not an end: "[If] you want to harm, you will harm the country no matter what kind of clearance you have" (Tr. 83).

After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on foreign influence. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings for or against Applicant on the allegations set forth in the SOR, as required by Directive ¶ E3.1.25:

Paragraph 1, Guideline B (Foreign Influence):	FOR APPLICANT
Subparagraphs 1.a-1.d:	For Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge