



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-15420
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden Murphy, Esquire, Department Counsel
For Applicant: *Pro Se*

December 11, 2008

Decision

HOWE, Philip S., Administrative Judge:

On February 10, 2006, Applicant submitted his Security Clearance Application (SF 86). On April 18, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guidelines B and E. 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 acknowledged receipt of the SOR on May 2, 2008. He answered the SOR in writing on May 5, 2008, and requested a hearing before an administrative judge. DOHA received the request on May 5, 2008. Department Counsel was prepared to proceed on June 9, 2008. The case assignment to another administrative judge was made on June 10, 2008. It was then reassigned to me on June 19, 2008 based on caseload considerations. DOHA issued the original Notice of Hearing on June 25,

2008, setting the hearing for July 16, 2008. The case was continued to July 17th with Applicant's concurrence because I was taken ill, and the case was reassigned to another administrative judge to hear. On said date, Applicant requested a continuance, and the motion was not opposed by the Government. That part of the hearing process was on the record and a transcript made of it, received by DOHA on July 25, 2008. The hearing was continued and the case was reassigned to me again. A second Notice of Hearing was issued September 19, 2008, setting the new hearing date of October 16, 2008. I convened the hearing as scheduled on October 16, 2008. The Government offered Exhibits 1 through 8, and documents for administrative notice, which were received without objection. Applicant testified. He submitted Exhibits A through C, without objection. DOHA received the transcript of the hearing (Tr.) on October 22, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

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 and Syria. (Tr. at 19-25.) The request and the attached documents were not admitted into evidence but were included in the record as Administrative Notice Documents I through XIII. Applicant had no objection to these documents. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his Answer to the SOR, dated May 5, 2008, Applicant admitted all the factual allegations in the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 32 years old, married with one child, and worked in Iraq in 2006 as a translator for United States military forces. He was wounded on March 21, 2006, during an attack while performing his duty. He continued to serve and was evacuated in October 2006. He has not returned to Iraq since then. He works as a real estate agent and owns his home in the United States. (Tr. 30, 31, 47-51, 70; Exhibits 2, A, B)

Applicant came to the United States in 1993 with his family after they fled Iraq and the regime of the dictator Saddam Hussein. Applicant became a U.S. citizen in 1999. His parents and siblings are naturalized U.S. citizens, and live in the United States. He has six sisters and four brothers. Two of his brothers are deceased. His father owns one-third of a house in Iraq which he inherited from his father. Other relatives own the remaining interests in the house. One of Applicant's brothers lived in the house from 2004 to 2007, but it is vacant now. (Tr. 65-79, 97, 98; Exhibits 1-8, A, B)

Applicant entered a business arrangement in 2004 with certain family members, including a brother in Iraq, to purchase used trucks in Germany or other countries, and

ship them to Iraq through Syria because it has the closest port to Iraq. Applicant traveled to Iraq in 2004 as part of that business operation. Applicant's brother planned to sell the trucks in Iraq. Applicant expected to make about \$30,000 on the transaction, but only realized about \$7,000. That brother now lives in the United States and drives a semi-truck. (Tr. 65-79; Exhibits 1-8, A, B)

One of Applicant's sister's husband worked for the U.S. Government in Iraq as a cultural advisor. He resigned this past summer, and now resides in the United States. Another sister's husband worked as a translator for the U.S. Government in Iraq, and he is now living in the United States. (Tr. 68, 69; Exhibit 2)

Applicant has a cousin who is a driver for the Iraqi oil ministry, but he has had no contact with him since December 2007. Applicant listed a friend as a reference on his SF 86 who worked for the Iraqi Embassy in Washington, D.C., at least as of February 2006. Applicant has not had contact with him for two or three years. (Tr. 69-71; Exhibits 1-8, A, B)

Applicant married his Iraqi-born wife in Syria. The arranged marriage occurred in 2003. His wife is an Iraqi citizen with a "green" card. Her mother, an Iraqi citizen, lives in Syria, and Applicant sent her at his wife's request no more than \$1,000 to support her. He has not sent any money recently. His wife worked in a book store in Syria for two or three years after fleeing Iraq. His wife speaks with her mother and two brothers weekly on the telephone. Applicant does not speak with them, and has no relationship with his wife's relatives. He has not seen her brothers since the marriage in 2003. They have not been to the United States. Applicant does not know what his brothers-in-law do for a living. His wife went to Syria in 2006 when he went to work in Iraq. (Tr. 55-64, 70; Exhibits 1-8)

Applicant was rated highly in the performance of his duties as a translator. He was described as "quite personable" by his co-worker in 2006. He was described as having expert abilities. He liked his job and wants to return to Iraq. He held an Interim Secret security clearance while in Iraq and handled classified information without breaching security regulations. He was recommended for two awards for his translator duty performance. (Tr. 30-51; Exhibit A)

In 1997, Applicant and a mechanic he employed were denied entry into Canada because the mechanic did not have a passport or a birth certificate. Applicant was 21 years old at the time. Both men became rude and obnoxious to the Canadian border officials. He had to obtain a criminal clearance letter from his home state before he could enter Canada again. In 2004, while in Germany buying trucks, Applicant was on a subway system. He had a ticket for travel in certain zones, but needed to travel beyond the zone limit. He did not buy the additional ticket, and when confronted by the German ticket checker, gave a false address. He paid the ticket and fees before he left Germany that year. He has had no further trouble with law enforcement officials since 2004. (Tr. 80-94; Exhibits 1-8)

On a day trip to Canada to have dinner and visit a casino in the fall of 2006, Applicant met two women. He later had sexual intercourse with one of these women on two occasions. Applicant defended his actions by asserting this relationship was in the nature of a "temporary marriage" as explained in a book he offered as an exhibit. The book is titled, "Temporary Marriage in Islam," written by the director of the Islamic Institute of Knowledge, located in the United States. Applicant has not seen this woman since his last meeting with her in 2006, and has not had further sexual relations with her. His wife does not know about this relationship. (Tr. 85-91; Exhibit C)

I take administrative notice of the following facts: In 2003, The United States led a coalition to remove the dictator Saddam Hussein from power in Iraq. That effort was successful, and a new constitution was written by the Iraqi people. After free elections, Iraq's new government took office. Despite the elections and new government, Iraq remains plagued by violence though safer and quieter this past year than previously due to the American troop increases since 2007. Violent acts are perpetrated by Al Qaeda terrorists and other insurgents. Numerous attacks and kidnappings have target the U.S. Armed Forces, contractors, and other civilians, as well as Iraqis. Although the new government has taken aggressive action against terrorists, the threat of terrorism in Iraq remains high, as do human rights abuses. Terrorist groups conduct intelligence activities as effectively as state intelligence services. (Administrative Notice Documents)

Syria is a Middle Eastern country with about 18 million citizens. Syria is on the United States list of state sponsors of terrorism. Since March 1963, it has been ruled by an authoritarian, one-party, socialist Ba'athist regime. It provides financial and military support to terrorist organizations. It ruled part of Lebanon, a neighboring country, for over a decade. It was determined to be involved in the assassination of former Lebanese prime minister who opposed Syrian interference in Lebanese affairs. In 2004, the U.S. Government banned the export of Syria of products other than food and medicine, and prohibited Syrian aircraft from landing in the United States. This executive order was later expanded. Syria has a history of human rights abuses. Many Iraqi refugees fled to Syria, and total about 1.3 million Iraqis. There is a U.S. State Department travel warning about travel to and within Syria. (Administrative Notice Documents)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶

2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion as to obtaining a favorable security decision.”

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern pertaining to foreign influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interest, 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Two are potentially applicable in this case:

(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.

Applicant's mother-in-law and two brothers-in-laws are citizens of Iraq, but are refugees living in Syria. His wife also lived in Syria as a refugee with her family until Applicant married her and brought her to the United States. Applicant's family members (i.e., parents and siblings) live in the United States and are naturalized U.S. citizens. While Iraq struggles with the creation of a democracy, it continues to be routinely victimized by terrorist attacks. This creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. It also creates a potential conflict of interest for Applicant. Syria is a state sponsor of terrorism and ruled by an authoritarian regime. AG ¶ 7(a) and (b) have been raised by the evidence.

The Government produced substantial evidence of those two disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove mitigation. Two conditions that could mitigate the disqualifications are provided under AG ¶ 8:

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

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).

(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;

Applicant established the application of AG ¶ 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. interests. In 1993, he came here as a refugee and proudly became a naturalized citizen in 1999. He worked at various jobs since his arrival, until beginning his position with a federal contractor in 2006. He does not own any property in Iraq, but has a one-ninth interest in one-third of a house his father inherited in Iraq. That is a small percentage of this property. He has a close relationship with his immediate family members who reside in the United States. He did not return to Iraq until 2004 on business, and then again in 2006, when he started his job with the U.S. forces. He was wounded in an attack while working as a translator with U.S. forces. His ties to the United States are much stronger than his ties to his wife's family living in Syria. Applicant has little or no contact with his wife's family in Syria. He lives with his wife and daughter in the United States. He is close to his wife. She has returned to Syria to see her mother only once since married to Applicant in 2003. All business contacts with his brother in 2004 to import trucks into Iraq occurred four years ago and the business does not exist anymore. Applicant made little money from the effort and that brother now lives in the United States. His last contact with a friend at the Iraqi Embassy in the United States was at least two years ago. All other contacts listed in the SOR are old and no longer exist in the same way as alleged in the SOR.

AG ¶ 8(c) has no application to Applicant's relationships with his spouse, because she has a "green" card and lives in the United States with him. There is no likelihood that his marital relationship will create a risk for foreign influence or exploitation. It has some application to his contact with his wife's family members in Syria, because he does not have contact with them. Although there is a remote possibility that terrorists could attempt to coerce or threaten Applicant through his mother-in-law or his wife's siblings living in Syria, it is highly unlikely.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation; and,

(b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes two conditions that could raise a security concern and may be disqualifying:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; and,

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

The SOR alleged three incidents of personal misconduct under this guideline. Applicant was involved in two minor incidents in Canada and Germany between 1997 and 2004. The first involved rude behavior while trying to enter Canada with a mechanic he hired to work on a truck. This behavior has not recurred. The second was not buying a zone ticket for a German subway ride. His third incident of misconduct involved two adulterous incidents with a woman in Canada, which he labels "temporary marriage" within his Muslim religion. His wife does not know about these actions. These adulterous actions could affect his personal standing in the community in which he lives, if they became known to his family or community. They demonstrate questionable judgment and untrustworthiness within his marital relationship.

AG ¶ 17 provides conditions that could mitigate security concerns:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully.

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and,

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Mitigating Condition AG ¶ 8 (c) applies here. The first two incidents were minor and occurred long ago. They are not a factor in determining Applicant's eligibility. Subsequent to them, he performed very well in Iraq as a translator. His adultery, regardless of his characterization of it as "temporary marriage," occurred immediately after he returned from Iraq. It was two years ago, and was consenting conduct between two adults. It has not recurred. It is a diminished factor in evaluating Applicant's security eligibility. The record evidence does not support the application of any other condition.

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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

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's ties to the U.S. relative to his [or her] ties to a foreign country; his or her ties 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. Four circumstances weigh against Applicant in the whole person analysis. First, there is a significant risk of terrorism and human rights abuses in Iraq and Syria. 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 his mother-in-law and her sons, who live in Syria, to obtain such information. Second, he had connections to Iraq before he left there in 1993. He was born in Iraq and spent his formative years there.

Substantial mitigating evidence weighs in favor of granting Applicant a security clearance. Applicant is a mature person. He came to the United States as a refugee in 1993 and became a naturalized citizen in 1999. He has worked in the United States since his arrival and currently resides with his wife and daughter. His parents and siblings also came to the United States, live here, and are citizens. He owns property in the United States. Out of his sense of gratitude and dedication to the United States, he worked with the U.S. Army, as an Arabic-speaking linguist. He takes his loyalty to the United States very seriously, and has worked diligently for a defense contractor in an important capacity for our troops. He was wounded in combat, and after his wounds were treated, he kept serving as a translator with our troops. I give great weight to the letters of recommendation, written by the soldiers with whom he served. They assess him as loyal and trustworthy, and praise his significant contributions to the cause of freedom in Iraq. I also was impressed by the recommendations for two awards Applicant received. After leaving Iraq in 1993, he did not return for 11 years and then for the purpose of enjoying the new economic freedom brought there by the United States. There is no evidence that he has ever taken any action that could cause potential harm to the United States or failed to abide by his employer's rules and regulations.

Applicant held an interim security clearance during his tenure in Iraq without any indication that he breached security policies or procedures. While that fact is not normally to be considered a factor in granting a clearance, the Appeal Board noted in ISCR Case No. 05-03846 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 the 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 nation 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.

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 and personal conduct. I conclude the "whole person" concept for Applicant.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraph 1.a to 1.o:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a to 2.c:	For Applicant

Conclusion

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

PHILIP S. HOWE
Administrative Judge