



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



In the matter of:)
)
) ISCR Case No. 07-16765
)
)
Applicant for Security Clearance)

Appearances

For Government: Braden Murphy, Esquire, Department Counsel
For Applicant: Michael M. Hadeed, Esquire

November 12, 2008

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, testimony, and exhibits, I conclude that Applicant failed to mitigate the Government’s security concerns under the Foreign Influence adjudicative guideline. His eligibility for a security clearance is denied.

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On April 22, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing 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.

On July 21, 2008, Applicant answered the SOR in writing and elected to have a hearing before an administrative judge. On August 13, 2008, the case was assigned to me. I convened a hearing on September 30, 2008, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for

Applicant. The Government called no witnesses, introduced three exhibits (Ex.), offered facts in five official documents of the U.S. Government for administrative notice regarding Iraq, and facts in nine official documents of the U.S. Government for administrative notice regarding Syria. The Government's exhibits were identified as Ex. 1, 2, and 3, and they were admitted to the record without objection. Applicant did not object to my taking notice of facts provided in the Government's administrative notice documents. The Government's administrative notice documents were identified as HE 1. Applicant testified on his own behalf, called two witnesses, introduced four exhibits (Ex. A, B, C, and D), and offered facts from three official documents of the U.S. Government for administrative notice. He also offered a factual definition from a non-governmental source for administrative notice. The Government did not object to my taking administrative notice of facts offered by Applicant. Applicant's administrative notice documents were identified as HE A.

At the conclusion of the hearing, I left the record open until close of business October 7, 2008, so that the Government and Applicant could submit additional information about Applicant's wife's security clearance status. The Government submitted a memorandum on the subject, which I identified as Ex. 4 and admitted to the record without objection. Applicant also timely submitted one additional document on the subject, which I identified as Applicant's Ex. E and entered in the record without objection. DOHA received the transcript (Tr.) of the hearing on October 7, 2008.

Findings of Fact

The SOR contains five allegations that raise security concerns under adjudicative guideline (AG) B, Foreign Influence (SOR ¶¶ 1.a. through 1.e). In his Answer to the SOR, Applicant admitted all allegations under adjudicative guideline B. His admissions are admitted herein as findings of fact.

After a thorough review of the record in the case, including witness testimony, exhibits, relevant policies, and the applicable adjudicative guideline, I make the following findings of fact:

Applicant is 55 years old, married, and the father of two minor children. He was born in Iraq and is an ethnic Kurd. He seeks a security clearance so that he may be employed by a government contractor as a translator. He is fluent in Arabic, Farsi, and two Kurdish dialects. (Ex. 1; Tr. 42-45, 93-94.)

In 1973 and 1974, Applicant was a member of a Kurdish political organization. He joined the party in order to be eligible for a job. He had a 12th grade education. Subsequently, he was employed by a local government to teach Arabic and mathematics to fourth and fifth grade students in the Kurdish area of Iraq. In 1974, when Kurds were being persecuted, he left Iraq and went to live as a refugee in Iran. He resided in a refugee camp and, for about two years, studied to be a social worker and took part in a program in the camp for the training of translators. Sometime during 1975 and 1976, Applicant's mother, who lived in Iraq, was detained by Iraqi authorities who

intended to use her to pressure Applicant to return to Iraq. In 1976, believing the Iranians were not doing enough to help the Kurds, and unable to return to Iraq for fear of being put to death by the Iraqi authorities, Applicant emigrated from Iran to the United States. He became a U.S. citizen in 1982. (Ex. 2 at 3-4, 8-9; Tr. 74-79, 100.)

Applicant attended vocational school in the United States and learned auto mechanics. He worked for approximately 25 years as an automobile mechanic. (Tr. 47-49.)

In 1988, Applicant and a friend, also an ethnic Kurd, traveled to the Kurdish part of Syria. They met and married Syrian women of Kurdish background. The women were sisters. When it came time for Applicant and his friend to leave Syria and return to the United States, they were detained and questioned by Syrian secret police, who wanted to know their purpose in visiting Syria. After questioning Applicant and his friend for one week, the Syrian secret police permitted them to leave Syria. (Ex. 2 at 8; Tr. 83-84.)

Applicant's wife became a U.S. citizen in 1992. She is employed by a U.S. government agency but does not have a security clearance. Her father and mother are citizens and residents of Syria. Applicant's father-in-law is approximately 80 years old. He owns farm land, rents it to tenants, and shares the profits with them. Applicant's wife sponsored her parents for permanent registered alien status. Applicant's father-in-law has a U.S. Social Security card. From 2000 to about 2003 or 2004, Applicant's wife's parents visited Applicant and his wife yearly and resided in Applicant's home when they visited them. Applicant's wife speaks with her parents by telephone, but Applicant does not know how often she communicates with her parents. He thinks his wife might speak with her parents about every two months. Applicant's in-laws complain of poor treatment by the government of Syria. Applicant's wife has a brother and a sister who are also citizens and residents of Syria. The Syrian government persecuted the husband of one of Applicant's wife's sisters. Consequently, he moved to Sweden. (Ex. 1; Ex. 2 at 6, 19; Ex. 4; Ex. E; Tr. 83-90, 106-108, 114, 116.)

Applicant has one sister and eight brothers who are residents and citizens of Iraq. Most of Applicant's siblings were little children when he left Iraq in 1974. All live in the north of Iraq. Applicant does not communicate regularly with his siblings because many of them have no stable work and want his financial help. He cannot afford to help them. Recently, one of Applicant's brothers contacted him and asked for money. Applicant arranged for the brother to receive less than \$300. (Tr. 58-59, 64, 120-121.)

Applicant's sister is a full-time housewife and mother. She is not employed outside her home. Since 2005, one of Applicant's brothers has worked as a driver for a military entity in Iraq; another brother is a taxi driver; and a third brother has a small vegetable produce shop. Applicant's fourth brother is a barber; his fifth brother is a mason; and a sixth brother is a day laborer. Applicant's seventh brother is a school custodian. His eighth brother is a physician's assistant. (Tr. 65-69.)

After the fall of Saddam Hussein, one of Applicant's brothers received an anonymous note threatening him with death unless he moved to another part of Iraq. He took the threat seriously and moved. (Tr. 119-120)

Since emigrating from Iraq to the United States, Applicant has returned to Iraq twice, once in 1992 and once in 2005, during the Iraq war. He traveled with his young son to Iraq in 2005 to visit his mother who was ill and who died shortly after his return to the United States. (Tr. 60-61.)

After working as an automotive mechanic for many years, Applicant suffered a heart attack in July 2006 and had three stents placed in his heart. He decided he could no longer do heavy work and sought a job as a translator. After completing his application and taking tests, Applicant was informed he could not be deployed as a translator to a war zone because he was taking a prescribed blood thinner. Since that time, Applicant has been unemployed and on disability. His wife supports the family and holds three jobs. One of her jobs is with a federal agency. Applicant confirmed that he is being sponsored for a job as a translator by a government contractor, pending a decision on his eligibility for a security clearance. (Tr. 50-53, 100-102.)

In his testimony Applicant sometimes rambled and I found it difficult to follow his explanations. (Tr. 42-44, 47-48, 53-54, 58, 75,79, 93.)

I take administrative notice of the following facts about Iraq:

"In 2003 a U.S.-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 Qaeda terrorists, Sunni insurgents, and Shiite militias and death squads." (HE 1: Iraq: Summary at 1.)

"The State Department has specifically stated that: '[t]he risk of terrorism directed against U.S. citizens and interests in Iraq remains extremely high.' Furthermore, the State Department has posted the following warning:

Attacks against military and civilian targets throughout 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."

(HE 1: Iraq: Summary at 2.)

"Furthermore, there are U.S.-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.’ ” (HE 1: Iraq: Summary at 2.)

“Iraq’s Kurds are represented by two major parties, which since 2003 have cooperated in the government of the Kurdish Autonomous Region. Both parties have supported the U.S. presence in Iraq and played important roles in interim governments. The secular, nationalist Kurdistan Democratic Party (KDP) is the larger of the two parties and held one of two vice presidencies in the Interim Iraqi Government. Founded by the main Kurdish tribe, the Barzanis, the KDP has established good relations with the Turkish government. The Popular Union of Kurdistan, led by Jalal Talabani, also has a secular nationalist agenda and represents Kurds closest to the Iran border.” (HE A: Country Profile: Iraq, Library of Congress Federal Research Division, August 2006, at 20.)

The Peshmerga is an indigenous Kurdish military organization which operates as the primary security force for the Kurdistan Regional Government in northern Iraq. Authority for Peshmerga’s operations comes from Iraqi law and the constitution of Iraq. U.S. troops do not operate in the Kurdish region. The Kurdish areas are under Kurdish provincial control and under the control of the region of Iraqi Kurdistan. (HE A: Definition of Peshmerga, Background: Iraq’s Militia Groups, Counsel [sic?] on Foreign Relations; U.S. Department of State: Update from U.S. Embassy in Iraq, dated April 10, 2008, at 2.)

I take administrative notice of the following facts about Syria:

“Since March 1963, the Syrian Arab Republic 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. U.S. 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 United Nations 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.” (HE 1: Syria: Summary at 1-2.)

“A Travel Warning is in effect for Syria following September 12, 2006 attacks on the U.S. Embassy in Damascus. In 1998 and 2000, mobs in Damascus attacked the U.S. Ambassador’s Residence and the U.S. Embassy, respectively.” (HE 1: Syria: Summary at 2.)

“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. On April 26, 2006, President Bush extended the May 11, 2004 executive order to block all property and property interests in the United States or in the possession and control of any United States person that was involved in terrorist acts in Lebanon perpetrated by Syria on February 14, 2005, or otherwise impeding the work of the Commission created to assist Lebanon in identifying and punishing those responsible for the February 14, 2005 acts of terrorism. On February 13, 2008, President Bush again expanded the 2004 executive order to include those persons ‘responsible for or otherwise significantly contributing to actions taken or decisions made by the Government of Syria that have the purpose or effect of undermining efforts to stabilize Iraq or of allowing the use of Syrian territory or facilities to undermine efforts to stabilize Iraq.’ ” (HE 1: Syria: Summary at 2-3.)

“The Department of State’s Report on Human Rights Practices for 2007 describes the Syrian Government’s human rights record as ‘worsened.’ The report lists the following human rights abuses 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. Security forces frequently use torture, including against foreign citizens. . . . The four major branches of the Syrian security forces . . . devote resources to monitoring internal dissent and individual citizens, and they operate outside the control of the legal system. Security personnel have placed foreign visitors under surveillance, have monitored telephones, and have searched the hotel rooms and possessions of foreign visitors.” (HE 1: Syria: Summary at 3-4.)

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, the administrative judge applies these guidelines 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. . . .” 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.

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

Under Guideline B, Foreign Influence, “[f]oreign 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.” AG ¶6.

Additionally, adjudications under Guideline B “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 U.S. citizens to obtain protected information and/or is associated with the risk of terrorism.” AG ¶6.

I have considered all of the disqualifying conditions under the Foreign Influence guideline. The following facts raise security concerns under disqualifying conditions AG ¶¶ 7(a), 7(b), and 7(d):¹

Several mitigating conditions under AG ¶ 8 might be applicable to Applicant's case. If "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.," then AG ¶ 8(a) might apply. If "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," then AG ¶ 8(b) might apply. If "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," then AG ¶ 8(c) might apply.

In 1973 and 1974, Applicant, then a citizen and resident of Iraq, was a member of a Kurdish political organization. He joined the organization to qualify for a job. He came to the United States in 1976 and became a U.S. citizen. He has had no further contact with the political organization. I conclude that his membership in the Kurdish political party is not a present security concern.

Applicant has nine adult siblings who are citizens and residents of Iraq. He is the only sibling who has left Iraq and become a U.S. citizen. While progress has been made in stabilizing Iraq, many Iraqi citizens are experiencing disruptions that make it difficult to hold stable jobs. One of Applicant's brothers recently contacted him and requested money. Applicant responded to his request. Because he cannot support all of his relatives who need money, Applicant does not have regular contact with his siblings. However, he is aware of their difficulties, and he helps them when he can.

Ethnic tensions in Iraq are strong and sometimes violent. After the fall of Saddam Hussein's government, one of Applicant's brothers received a death threat and was forced to move his home. Since 2005, another brother has worked as a driver for a military organization in Iraq, a job that could expose him to danger, violence, and the threat of terrorism. Applicant's contacts with his siblings in Iraq create a heightened risk of foreign exploitation, manipulation, or coercion, and his connections with them could

¹ AG ¶ 7(a) reads: "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(b) reads: "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(d) reads: "sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion."

create a potential conflict of interest between his obligation to protect sensitive or classified information and his desire to help his Iraqi Kurd relatives by providing that information. I conclude that Applicant's Iraqi family contacts and connections raise security concerns under AG ¶ 7(a) and AG ¶7(b).

The government of Syria sponsors and harbors terrorists. Its security forces target and threaten foreign citizens. In 1988, Applicant, then a U.S. citizen, was detained and questioned for several days by Syrian security forces before they permitted him to leave and return home to the United States. One of Applicant's wife's siblings was persecuted by the Syrian government and forced to leave Syria. Applicant and his wife's family have direct knowledge of persecution by the forces of the government of Syria.

Applicant's wife was born in Syria to Kurdish parents. Her parents, now elderly, reside in Syria and are citizens of Syria. Applicant's father-in-law and mother-in-law have U.S. permanent resident status. From about 2000 to 2004, they traveled yearly to the United States from Syria and stayed with Applicant and his wife in the home they shared. Applicant's contacts with his wife's family members who are citizens and residents of Syria also create a heightened risk of foreign exploitation, manipulation, and coercion. These connections could create a potential conflict of interest between Applicant's obligation to protect sensitive and classified information and his desire to help his Syrian relatives. Additionally, Applicant shares his home with his wife, a naturalized U.S. citizen, whose parents are citizens and residents of Syria. Applicant has shared his home with his Syrian relatives. These facts raise security concerns under AG ¶¶ 7(a), 7(b), and 7(d).

An applicant has a heavy burden to show that he and his family members would not be subject to undue influence by foreign agents or terrorists operating in Iraq and Syria. Applicant failed to provide sufficient information to rebut or mitigate these security concerns. I conclude that the mitigating conditions under AG ¶¶ 8(a), 8(b), and 8(c) are inapplicable.

Nothing in Applicant's answers to the Guideline B allegations in the SOR suggested he was not a loyal U.S. citizen. Section 7 of Executive Order 10865 specifically provides that industrial security clearance 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."

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) 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.

I considered the potentially disqualifying and mitigating conditions in light of the whole person concept and all the facts and circumstances surrounding this case. Applicant suffered a heart attack which made him unfit for heavy work as an automobile mechanic, a trade he had pursued for over 25 years. He knew Arabic, Farsi, and two Kurdish dialects, and he sought work as a translator. Because he was required to take a prescribed blood thinner for his heart condition, he was not eligible to be assigned as a translator in a war zone. His desire to serve his adopted country as a translator was admirable but perhaps impractical. His connections to his family members in Iraq, a country that remains unstable and subject to terrorist acts, raised security concerns about his potential for pressure and coercion. His connections to family members in Syria, an acknowledged state sponsor of terrorism and a country that had persecuted him and a member of his wife's family, created an unacceptable risk of foreign influence or exploitation.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude that Applicant failed to mitigate security concerns arising under the foreign interest adjudicative guideline.

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	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d and 1.e:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Joan Caton Anthony
Administrative Judge