



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-18065
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Gregg Cervi, Esquire, Department Counsel
For Applicant: Pro Se

September 9, 2008

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86) on September 28, 2006. On May 9, 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 (Foreign Influence) and Guideline E (Personal Conduct). 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 June 9, 2008; answered it on the same day; and requested a hearing before an administrative judge. The case was assigned to me on July 2, 2008. DOHA issued a notice of hearing on July 16, 2008. I convened the hearing as scheduled on August 14, 2008. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified on his own

behalf and presented one witness. Applicant submitted Exhibits (A-G), which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on August 25, 2008. Eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Iraq (Tr. 10). The request and the attached documents are included in the record as Hearing Exhibit I. Hence, the facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his answer to the SOR, Applicant admitted the factual allegations in ¶ 1.a- and denied the other allegations in the SOR. His admissions in his answer to the SOR and at the hearing are incorporated in my findings of fact. I make the following findings:

Applicant is a 62-year-old man who was born and educated in Iraq. He graduated from a college of veterinary medicine and was a practicing veterinarian for many years. Applicant was drafted into the Iraqi military and served from 1986 until 1989 (Tr. 60). He has lived in the United States since January 1994 (Tr. 51). He became a naturalized U.S. Citizen in June 1999. He has been employed with his current employer since August 2006 as a translator (linguist) (GE 1). He speaks three languages. Applicant held an interim security clearance (Tr. 54).

Applicant married his wife in 1976 in Iraq (Tr. 63). She is a naturalized U.S. citizen and resides with Applicant in the U.S. They have no children. His father and mother-in-law are deceased. Applicant's parents are also deceased (Tr. 68).

Applicant has three retired sisters who are citizens of Iraq. Two sisters reside in Iraq and the youngest is now in Jordan. His brother, is a U.S citizen living in the U.S. Applicant maintained contact with his sisters once every two months according to the investigation in August 2006 for his security clearance and the information on his September 2006 security application. Applicant's three sisters who are now retired spend time at home. He believes because they are Christian, they would not be subject to kidnapping or terrorism. He believes because they are female they would not be subject to a kidnap situation because no one cares about women. He states they are older, ages 63, 72 and 74 respectively. Two sisters are retired teachers and one is a retired hotel worker. They all receive pensions. He believes most kidnapping occurs to people between the ages of 20 to 50 years of age. (Tr. 30; AE D). He concluded that security is now improved in Iraq. He emphasized that his sisters stay home and that they have no relationships with insurgents. His youngest sister is now in Jordan seeking to immigrate (AE D).

Applicant's wife also speaks to his sisters occasionally (Tr. 80). Applicant's Iraqi born, American citizen, brother-in-law was killed in Iraq after returning to the country (Tr. 66; GE 2).

Applicant's wife has a sister and a brother living in northern Iraq (Tr. 64). Her brother-in-law is retired from the Iraqi Army after 20 years. Applicant's sister works as a nurse in a hospital. Applicant's wife maintains phone contact with them once a week (Tr. 68).

In April 2007, Applicant spoke to an interviewer concerning his security clearance application. He stated he had not called or written to his three sisters living in Iraq since he came to the U.S. in 1994. He stated that he has no communication with them at all because he is an American citizen, and contact with him could pose too much risk for them. He claims that this is a misunderstanding with the investigator and a miscommunication (Tr. 16).

Applicant acknowledged at the hearing that his three sisters would be in great danger if he had contacted them in 2007. He explained that he did not mean to say that he had not contacted them since he has been in the states. However, he emphasized that the government is kidnapping and killing people and he feared for the safety of his sisters. He acknowledged that talking by phone is not safe and that corruption is everywhere. He admitted that he talked with his one sister during this time frame (2006) because she called him (Tr. 98). He also stated he sent some money (approximately \$500) to be divided among them at some point when he was in the U.S. (Tr. 108).

At the hearing, Applicant expounded on all the reasons that his three sisters would not be harmed in Iraq. However, that is not logical considering the fact that he said it was too dangerous to talk with them in 2007. Applicant did have some difficulty with the spoken language at the hearing. He repeatedly stated that he is not a threat to the U.S. However, his testimony was inconsistent. At one point, he said he rarely contacted his sisters and then when questioned again he said he really did not know when and if he contacted them (Tr. 76). He also said that his wife keeps in touch and then he concluded by saying that it is much better now in Iraq and not as dangerous. He stated this his sisters knew of his work with the U.S. Army as a translator (Tr. 99).

In his 2008 interrogatories, Applicant had an opportunity to correct anything that was not accurate in the 2007 interview. He did correct several items, such as his birth year, and the fact that his sisters have no affiliations with insurgents (GE 2). He did not correct the statement pertaining to his contact with his sister while in the U.S. Nor, did he correct the statement that his sisters in Iraq do not know about his work with the Army. He blames this on the fact that he was in the war zone, under great pressure and not able to concentrate properly in order to correct every error (Tr. 43).

Applicant has no financial interest in Iraq. He has no desire to return to the country. He claims he did not contact his sisters when he worked in Iraq. He did not

leave the military base (Tr. 57). Applicant does not own a home, but he has a retirement account valued at approximately \$130,000 (Tr. 113).

Applicant asserted his pride of U.S. citizenship and desire to resume work with the Army (AE A). He worked in a war zone in Iraq. He helped with translations of various documents (Tr. 53). Applicant's work also involved working in a tribunal and training some Iraqi police (Tr. 54). Applicant expressed a desire to fight terrorism after September 11, 2001. He further explained that he is a Christian and that he sent President Bush two letters (AE B) concerning the saving of the world from religious wars and massacre.

Applicant called a witness who has known him in the U.S. for 14 years. He met Applicant through an international club (social organization for people who speak foreign languages) in the United States. He testified that he was paid to testify at the hearing. In fact, he characterized himself as a "professional witness." He also related that Applicant maintained contact with his family in Iraq. The witness was hesitant at times but testified that he believed Applicant had recent conversations with his sisters (within the last year (Tr. 125). He elaborated that Applicant recently expressed concerns about the safety of his sisters in Iraq (Tr. 126) The witness stated that he had never heard anything negative about Applicant from the other social club members (Tr. 128). The witness stated that Applicant was a good family man.

Applicant presented a recommendation from a geologist friend who met him in 1993 in Jordan at a conference (AE C). She also knows him through membership in the international club. She noted that he has spoken out in opposition to terrorism. She recommends that he remain a translator/interpreter because he speaks the Iraqi dialect. She believes he would be of service to the United States.

I take administrative notice of the following facts about Iraq set forth in the Hearing Exhibits, including the fact that in 2003, the United States led a coalition to remove Saddam Hussein from power in Iraq. After free elections, Iraq's new government took office. Despite the elections and new government, Iraq remains engulfed in violence, perpetrated by Al Qaeda terrorists and other insurgents. Numerous attacks and kidnappings have targeted the United States Armed Forces, contractors, and other civilians, as well as Iraqis. Even with aggressive governmental action against terrorists, the threat of terrorism in Iraq remains. Terrorist groups can conduct intelligence activities as effectively as state intelligence services.

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 occupy a position . . . that will give that person 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 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 has three sisters who are residents and citizens of Iraq. (SOR ¶ 1.a). It also alleges his expressed fear that if any relatives found out about his translator duties, they would be subjected to grave danger by hostile interest within Iraq. (¶ 1.b). The security concern relating to Guideline B 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.

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). A disqualifying condition also 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). Applicant’s three sisters are citizens of Iraq. Two of them still reside in Iraq. Applicant maintained phone contact with them frequently. He took an assignment in the War Zone in Iraq as a translator and he acknowledged that his sisters know about his work. Based on this evidence, AG ¶¶ 7(a), and (b) are raised.

Since the government produced 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).

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.

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). The totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). Similarly, AG 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." Applicant has maintained contact with his sisters living in Iraq while living in the United States. His wife also maintains some telephone contact with them. He expressed fear about their safety in 2007 during an interview. Thus, the above mitigating conditions do not apply in this case.¶

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 testimony at the hearing spoke to his undivided loyalty to the U.S. However, he has a bond with his sisters and his wife does as well. His inconsistency about his contacts with his sisters and their welfare does not provide for mitigation under the above referenced guideline. There is the heightened risk that exists because his identity could become known and could result in manipulation, coercion, or pressure on Applicant. These facts do not allow mitigation under this condition 8(b).

Guideline E (Personal Conduct)

The SOR alleges Applicant deliberately provided false or misleading information to an investigator on April 16, 2007, when he stated that he had not called or written to his three sisters living in Iraq since he came to the United States in 1994. (SOR ¶ 2.a). The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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 cooperate with the security clearance process.

AG 16 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

Applicant listed in his security application that he maintained contact with his three sisters who are residents and citizens of Iraq. He later changed that information in an interview with an investigator in 2007. He had an opportunity to clarify or correct this information in interrogatories in 2008. He made certain corrections but did not change the reference to contact with his three sisters. At the hearing, he was inconsistent with his statements and answers to questions by counsel. I allow for the second language and possible misunderstandings, but I did not find Applicant credible, especially in light of his strong desire to maintain employment.

Paragraph 17 lists conditions that could mitigate security concerns. In pertinent part, AG ¶ 17 provides:

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

(f) the information was unsubstantiated or from a source of questionable reliability.

I have considered these mitigating conditions and do not find them applicable. The other mitigating conditions are not relevant in this case:

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) 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 all the facts and circumstances surrounding this case. Applicant strongly averred his loyalty to the United States, that he has shown a willingness to comply with rules and regulations, that he desires to establish security and safety to the people in his country. He is an educated man and is a naturalized U.S. citizen since 1999. He worked as a translator for the Army in 2006.

Applicant, in his own words, fears for the life of his siblings if his work with the U.S. contractor became known. He stated at the hearing that one of his sisters does know about his work with the Army. Applicant lived in Iraq until he was in his fifties. There is an increased risk that his identity could become known by someone who could identify him and his family and use that information to manipulate, pressure or coerce the Applicant in a way that is inconsistent with U.S. national interests.

Applicant believed the revocation was too harsh because he claimed he made a mistake in an interview regarding contact with his sisters. He cited the guidelines and believed that under a whole person analysis, he is clearly a loyal, honest, citizen. He believes that he should have an opportunity to continue with his work. He also stated that he now has no desire to contact his sisters because indirectly they are the reason for the revocation of his security clearance (Tr. 116).

After weighing the disqualifying and mitigating conditions under Guidelines B and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on foreign influence and personal conduct. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant his eligibility for access to classified information.

“Because of the extreme sensitivity of security matters, there is a strong presumption against granting a security clearance. Whenever any doubt is raised . . . it is deemed best to err on the side of the government’s compelling interest in security by denying or revoking [a] clearance.” *Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990). The evidence leaves me with doubts as to Applicant’s security eligibility and suitability.

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 of Enclosure 3:

Paragraph 1, Foreign Influence:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Personal Conduct	AGAINST Applicant
Subparagraph 2.a:	Against Applicant

Conclusion

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

Noreen A. Lynch
Administrative Judge