



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



In the matter of: )  
 )  
----- ) ISCR Case No. 07-18176  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Pamela C. Benson, Esquire, Department Counsel  
For Applicant: Fadi F. Toma, Esquire

January 9, 2009

**Decision**

HOWE, Philip S., Administrative Judge:

On March 2, 2006, Applicant submitted his Security Clearance Application (SF 86) in the electronic e-QIP version. On June 9, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the 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.

Applicant acknowledged receipt of the SOR on June 18, 2008. He answered the SOR in writing on June 24, 2008, and requested a hearing before an administrative judge. DOHA received the request on July 8, 2008. I received the case assignment on August 27, 2008. Thereafter, Applicant retained counsel who filed a Notice of Appearance and an Amended Answer on September 22, 2008. DOHA issued a Notice

of Hearing on October 20, 2008, and I convened the hearing as scheduled on November 5, 2008. The Government offered Exhibits 1 through 4, which were received without objection. Applicant testified and submitted Exhibits A through Y, without objection. DOHA received the transcript of the hearing (Tr.) on November 18, 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. (Tr. at 12, 14.) The request and the attached documents were admitted into evidence as Exhibit 4. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

In his Answer to the SOR, dated June 24, 2008, Applicant admitted 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 50 years old. He is unmarried. Applicant works for a defense contractor. He was born in Iraq. He is of the ethnic Kurdish heritage in Northern Iraq. He graduated from an Iraqi college in 1981 with an electrical engineering degree. He served his mandatory military duty in the Iraqi Army from 1981 to 1983. He had difficulty getting a job after his military service because he is a Kurd and was not a member of the ruling Ba'athist Party. In 1991, he fled Iraq along with his family and other persons from his hometown to escape possible attack by the previous Iraqi regime, and he went to a refugee camp in Turkey with his parents and sisters. They returned to Iraq when protected by United Nations coalition forces. He preferred not to return to Iraq. Applicant went to Turkey and applied for asylum in 1992, and sought to come to the United States. He was admitted as a refugee to the United States in 1992. In May 1999 he became a U.S. citizen. Applicant owns his home. He purchased it in 2001 for about \$98,000 and paid off the mortgage in 2005. He also paid \$86,000 in cash for seven lots next to his home. (Tr. 28-30, 43-49, 72; Exhibits 1-3, S-X)

From March 2003 to 2004, Applicant worked for a defense contractor as a translator in Iraq with the United Nations coalition forces during the liberation of Iraq from the Saddam Hussein Ba'athist Party regime. He had an interim security clearance, on which he had no violations. He worked very hard and took a break to rest from 2004 until February 2006, when he signed a contract with another Government contractor to work as a cultural advisor to the coalition forces in Iraq. He has had an interim security clearance since starting work with the second defense contractor, and there have been no violations of that security clearance. (Tr. 31-34, 51-54; Exhibits 1-3)

Applicant has five sisters and two brothers, all of whom were born in Iraq. Applicant's mother and four sisters live in Iraq and are citizens of that country. One brother died in the refugee camp in 1991. Another sister lives in Norway, as does an uncle whom Applicant has not had contact with since 1996. Of the four sisters living in Iraq, the third oldest of them is engaged to an Iraqi-born man and they will be moving to Germany after their marriage. His mother is 65 years old, and lives on the pension her husband, who died in 1996, earned as a policeman in Iraq. Applicant does not provide any financial support to her. His four sisters are school teachers in Iraq. The oldest sister is married to an electrician, the second oldest to an accountant, and the youngest is married to a real estate agent. Applicant last spoke with his mother and sisters four months prior to the hearing. He speaks with them by telephone two or three times each year. Applicant characterizes his relationship with his mother as a "long distance" situation. Also, Applicant's two brothers live in European countries, the Netherlands and Norway. Applicant testified his sisters and mother appreciate the United States efforts to bring democracy to Iraq, and does not regard himself as open to any coercion or pressure because of his familial relationships. (Tr. 37-41, 47, 50, 58-68; Exhibits 1-3)

Since leaving Iraq, Applicant has not had much physical contact with his family. He visited them for a month at a time in 1999 and 2005, staying at his mother's house. While there in those years, he visited a childhood friend. He has not had contact with that person since 2005. He used his U.S. passport each time to enter Iraq and any other country on route to that destination. Since becoming a U.S. citizen in 1999, Applicant has not voted in any Iraqi election, and prior to that the elections in Iraq were controlled by the Hussein regime. Applicant does not own any property in Iraq or any other foreign country. He has not had any contact with the Iraqi Embassy in the United States. He has no plans to visit Iraq on personal business as he did in 1999 and 2005. Applicant does not claim dual citizenship with Iraq, contending he renounced his Iraqi citizenship when he became a U.S. citizen. He is willing to renounce any vestige of Iraqi citizenship if it were found to exist currently. (Tr. 69, 70)

Applicant submitted 12 very favorable character letters from persons with whom he worked in Iraqi, including military members with whom he served and U.S. Department of State infrastructure reconstruction team leaders. They all reported excellent work by Applicant, the long hours he worked, his dedication to his duty and to the efforts being made in Iraq by the coalition forces, and recommended he receive a security clearance. Applicant also submitted several certificates awarded him by the coalition military forces for his duty performance. His performance evaluations for 2008, submitted as exhibits, are marked as "exceeds expectations" in his duty performance. Applicant also submitted his financial records to show his real estate purchases, his savings and investments, all directed toward showing his financial investment in the United States. (Exhibits A-Y)

I take administrative notice of the following facts: Iraq is a Middle Eastern country with 27 million people. In 2003, The United States led a United Nations coalition to remove Saddam Hussein, a long-serving dictator and Ba'athist Party leader, from power in Iraq. A parliamentary democracy was created pursuant to a new 2005 constitution.

After free elections in 2006, Iraq's new government took office. The Parliament was elected for a four year term. Despite the elections and new government, Iraq has had much violence, perpetrated by Al Qaeda terrorists and other insurgents. Numerous attacks and kidnappings have targeted the U.S. Armed Forces, contractors, and other civilians, as well as Iraqis. Although the new governmental 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. For the past 18 months, the large increase in U.S. combat troops in Iraq has substantially reduced violence. These troops were aided by Iraqi soldiers of the new Iraqi Government, and Sunni local forces that formerly supported the Al Qaeda insurrection. In Northern Iraq, the Kurdish local government and forces maintain a more peaceful environment for the residents than elsewhere in Iraq. The Iraqi Government has regained sovereignty over its territory, has primary responsibility for security, and the coalition, primarily American military forces now, operate according to a recently concluded status of forces agreement between the United States and Iraq. (Exhibit 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, 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;<sup>1</sup> and

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<sup>1</sup> 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).

(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 mothers and four sisters are citizens and residents of Iraq. While Iraq struggles with the creation of a democracy, it is randomly victimized by terrorist attacks. This situation creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. It also creates a potential conflict of interest. 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

(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 1991, Applicant escaped from Iraq to avoid the Hussein regime. He sought asylum and came then to the United States in 1992. He became a naturalized citizen in 1999. He worked in the United States since his arrival, does not own any property in Iraq, but owns a home and has his money in the United States. He returned to Iraq in 2003 to work with the United Nations coalition forces in removing the dictatorial regime then in power. He departed in 2004 after concluding his work with the first defense contractor for whom he worked. He visited his family in 1999 and 2005. He returned to work in Iraq with another defense contractor as a cultural advisor in 2006. He continued to do that job until his interim security clearance was removed in 2008 when the SOR was issued. He speaks to his mother and four sisters two or three times a year by telephone. He has not seen his mother or sisters since 2005. One other sister and his two brothers live in Europe. His ties to the United States are much stronger than his ties to his siblings and elderly mother living in Iraq. His strongly expressed gratitude to the United States for giving him shelter and a peaceful life is very persuasive to show his strong ties to the United States overcoming any residual attraction to his former country. In his former country he was a member of a discriminated minority who had limited job opportunities. He wanted to come to the United States in 1992 and escape the situation in Iraq.

AG ¶ 8(c) has limited application to Applicant's relationships with his siblings, with whom he has infrequent communication. Although there is a remote possibility that terrorists could attempt to coerce or threaten Applicant through his mother or siblings, it is highly unlikely.

### **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. But they are declining as the new Government matures and gains experience. 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 sisters and mother, who live in Iraq, to obtain such information. Second, he had connections to Iraq before he left there in 1991. He was born in Iraq and spent his formative years there. Third, his mother and four sisters remain citizens and residents of Iraq. Fourth, he maintains some contact with his mother and sisters.

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

1992 and became a naturalized citizen in 1999. He has worked in the United States since his arrival. He previously owned property in the United States, and currently has a bank account. Out of his sense of gratitude and dedication to the United States, he sought employment with a Government contractor in 2003 as an Arabic-speaking linguist. He takes his loyalty to the United States very seriously, and has worked diligently for a defense contractor for more than two years in an important capacity for 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. After leaving Iraq in 1991, he did not return for 8 years. No statements from his character witnesses recommended denial of his security clearance. 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.

### **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: For Applicant

Subparagraph 1.b: 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.

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PHILIP S. HOWE  
Administrative Judge