



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



In the matter of: )  
 )  
----- ) ISCR Case No. 08-01111  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Francisco Mendez, Esquire, Department Counsel  
For Applicant: *Pro Se*

July 31, 2009

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant was born in Kurdistan about 55 years ago. In 1976, Applicant fled to Iran and then that same year, he settled in the United States. He became a U.S. citizen in 1991. His wife was born in Iraq and became a U.S. citizen in 1998. His three children are U.S. citizens. Applicant returned to Iraq from 2005 to 2007, and served with U.S. combat forces as a translator. Applicant went on hundreds of dangerous patrols with U.S. Army personnel. Those who served with him in Iraq laud his duty performance and contributions to mission accomplishment. Applicant has significantly greater contacts with the United States than with Iraq. He can be expected to resolve any conflict of interest in favor of U.S. interests. Personal Conduct and Foreign Influence security concerns are mitigated. Eligibility for access to classified information is granted.

**Statement of the Case**

On September 9, 2005, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) (SF-86) (Government Exhibit (GE) 1). On May 20, 2005, he submitted an SF-86 (GE 2). On December 12, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, alleging security concerns under Guidelines E (Personal Conduct) and B (Foreign Influence) (GE 12). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On April 1, 2009, Applicant responded to the SOR and requested a hearing before an administrative judge (GE 13). On May 29, 2009, Department Counsel was prepared to proceed. On June 15, 2009, DOHA assigned the case to me. On June 25, 2009, DOHA issued a hearing notice (GE 11). On July 20, 2009, the hearing was held. At the hearing, Department Counsel offered 10 exhibits (GE 1-10) (Transcript (Tr.) 36-37), and Applicant did not offer any exhibits (Tr. 18). There were no objections, and I admitted GE 1-10 (Tr. 37). Additionally, I admitted the SOR, response to the SOR and the hearing notice (GE 11-13). I received the transcript on July 24, 2009.

### **Procedural Ruling**

Department Counsel requested administrative notice (AN) of facts concerning Iraq (AN Request with Ex. I to VI; Tr. 38). Department Counsel provided supporting documents to show detail and context for these facts. Applicant did not object, and I granted Department Counsel's request (Tr. 38).

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *ADMINISTRATIVE LAW*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

### **Findings of Fact<sup>1</sup>**

Applicant admitted the SOR allegations with explanations in his response to the SOR (GE 13). His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is 54 or 55 years old (Tr. 8). He was unsure about his date of birth (Tr. 23). He was born in Kurdistan and when he was old enough he joined the Kurdistan liberation forces (Tr. 50). When the Shah of Iran was in power, Applicant served with

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<sup>1</sup>The facts in this decision do not specifically describe employment, names of witnesses, names of other groups or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

Iranian forces and other Kurds in opposition to Saddam Hussein (Tr. 30-31). Then Iran and Iraq made a treaty and Applicant became a refugee in Iran (Tr. 31). On October 10, 1976, Applicant immigrated to the United States from Iran (Tr. 32, 43; GE 2). He became a U.S. citizen in 1991 (GE 3).

Applicant married in 1981 and divorced in 1988 (GE 2). He married his wife in 1991 (GE 2). His children were born in the United States in 1982, 1995, and 2004 (GE 2). His current wife was born in Iraq and became a U.S. citizen in 1998 (GE 2).

Applicant's mother, four brothers, sister and father-in-law are citizens and residents of Iraq (SOR ¶¶ 2.a to 2.f and 2.h; Tr. 47-48). His brothers and sister work for regional government municipalities (SOR ¶ 1.g). Applicant traveled through Iran on his way to Iraq in 2000 (SOR ¶ 1.k). When Applicant was deployed to Iraq from 2005 to 2007, he called his mother on the telephone (Tr. 49). He does not provide financial support to his mother (Tr. 50). He cares about his mother and feels loyalty to her (Tr. 54). He does not contact his brothers and sisters because when he left home he was a teenager and they were much younger (Tr. 50). They have very little in common and he does not really know them (Tr. 50; GE 13). His mother is the only relative in Iraq that he contacted and communicates to using the telephone, and he only communicates with her once or twice a year (Tr. 51-52). His wife may have some contact with her father or family living in Iraq (Tr. 52-53). However, he was unsure about the degree of contact his wife has with her relatives in Iraq (Tr. 53).

In 2000, Applicant, his wife, and his son visited Applicant's mother and some other relatives in Iraq (Tr. 48; SOR ¶ 1.k; GE 13). This is the most recent time he has seen his mother (Tr. 48). His only other trip to visit his mother was about twenty years ago (GE 13).

Applicant loves the United States (Tr. 32). He has a wife and three children living in the United States (Tr. 32). He owns a car, boat, and house, which are located in the United States (Tr. 32). He does not own any property in Iraq.

Applicant has excellent Arabic language skills, and is knowledgeable concerning Middle East culture and Islam (Tr. 33-34). He was excited about opposing the terrorists and supporting the United States (Tr. 35). He wanted to assist the U.S. Armed Forces as a linguist (Tr. 35-36). Applicant served with the U.S. Army for six months of pre-deployment training and then two years in Iraq in the 2005 to 2007 timeframe (Tr. 27-28, 59-60). He served with the U.S. Army in Mosul, which is an exceptionally dangerous area of Iraq (Tr. 28). He went on about 300 missions with the U.S. Army, patrolling the streets, attacking the enemy, and searching for insurgents and weapons (Tr. 29; GE 13). He is proud to be an American and cherishes living under the U.S. Constitution, the rule of law, and the freedoms embodied in American life (Tr. 32).

### **Names used on SF-86s**

In Iraq, when a person is born they receive a one-word first name (Tr. 40). Applicant was born at home and does not have a birth certificate (Tr. 44). His mother

did not register him in any official Iraqi records when he was born (Tr. 44). Persons born in Iraq also retain their father's first name, their grandfather's first name, their great grandfather's first name, and their great great grandfather's first name (Tr. 40). The number of names can extend back many generations (Tr. 40). Additionally, his mother added the name, "Mohamad," which is often added to Iraqi names as a blessing (Tr. 44, 55). Applicant sometimes used five different names in various combinations: his first name, his father's name, his grandfather's name, Mohamad, and his great grandfather's name (Tr. 41).

When Applicant completed his May 20, 2005 and September 9, 2005 SF-86s he used his first name, and two other names. In the section of these SF-86s for "Other Names Used," he indicated his first name, and two other names (GE 1; GE 2). The names cited were always his first name and combinations of his father's name, his grandfather's name, his great grandfather's name, and/or Mohamad (Tr. 41; GE 1; GE 2).

SOR ¶¶ 1.a and 1.b state Applicant used various combinations of these five names on financial and judicial records after arriving in the United States. However, he always used the same first name. He explained that he did not list the various combinations of the five names on his SF-86 because he was rushing to complete it at his employer's request (Tr. 24). He was inconsistent in his use of the various names on financial and judicial records, as well as on the two SF-86s. His failure to include more detailed information about use of multiple names on his SF-86s was inadvertent, not intentional, and not intended to deceive (Tr. 24-26, 43-44, 55-59).

## **Character Evidence**

A U.S. Army captain, who utilized Applicant's assistance as a translator in Iraq, provided a letter of recommendation for Applicant (GE 13). The letter lauds Applicant's hard work, dedication, professionalism, competence, and excellence (GE 13). Applicant "has unlimited potential and will excel under any circumstance" (GE 13).

On December 18, 2005, at Mosul, Iraq, Major General David M. Rodriguez signed a certificate of appreciation for Applicant's support to Operation Iraqi Freedom III (GE 13). The certificate thanks Applicant for his "honor, patriotism, and selfless service as an interpreter of Task Force Freedom" (GE 13).

## **Iraq<sup>2</sup>**

In 2003, the United States led a coalition to remove Saddam Hussein from power in Iraq. Following the swift invasion and successful removal from power, the United States endeavored to set a solid foundation of democratic institutions in Iraq. The

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<sup>2</sup>The facts in the section concerning Iraq are from Department Counsel's factual summary, except for some comments about the relationship between the United States and Iraq, which are from the U.S. Department of State, *Background Note: Iraq*, Feb. 2008 (AN I, enclosure I) and U.S. Department of State, *Country Specific Information: Iraq*, Oct. 22, 2008 (AN I, enclosure III).

Constitution in Iraq was ratified on October 15, 2005. After free elections in 2005, Iraq's new government, a parliamentary democracy, took office in March 2006.

In 2007, 92% of Iraq's exports were in crude oil and crude oil materials. Almost half of Iraq's exports went to the United States. The U.S.' ultimate goal in Iraq is to establish a peaceful, united, stable, democratic, and secure nation that will be an ally of the United States in the war against terrorism. The United States has invested thousands of lives and billions of dollars to assist in the reconstruction of Iraq. Success in Iraq is a high national priority of the United States.

Despite the elections and new government, Baghdad, Mosul and several other areas have especially serious problems with violent terrorists and insurgents. Although there have been recent improvements in the security environment, Iraq remains dangerous, volatile and unpredictable. Some areas of Iraq are more peaceful and less susceptible to terrorist attacks than others; however, all areas of the country are still very dangerous. Terrorists have the ability to strike most areas of the country with explosive devices and mines. Numerous attacks and kidnappings have targeted the U.S. Armed Forces, contractors, and other civilians, as well as Iraqis. Even with U.S. and Iraqi aggressive governmental action against terrorists, the threat of terrorism in Iraq remains very high. Terrorist groups can conduct intelligence activities as effectively as state intelligence services.

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant 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 overarching 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 [A]pplicant concerned.” See Exec. Or. 10865 § 7. See *also* Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. 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 (4<sup>th</sup> 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 or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[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**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude Guidelines E (Personal Conduct) and B (Foreign Influence) are the relevant security concerns with respect to the allegations set forth in the SOR.

### **Personal Conduct**

AG ¶ 15 explains why personal conduct is a security concern stating:

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.

AG ¶ 16 describes two conditions that could raise a security concern and may be disqualifying in this case in regard to the allegation Applicant provided a false security clearance application:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

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

On May 20, 2005, and on September 9, 2005, Applicant signed SF-86s. His SF-86s asked about "Other Names Used" and Applicant did not list all the names he had used on various documents such as driver's licenses, immigration documentation, and traffic court. He admitted that his answers about other names used were incomplete. AG ¶¶ 16(a) and 16(b) both apply and further review is necessary.

AG ¶ 17 provides seven conditions that could mitigate personal conduct security concerns in this case:

(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.

Applicant credibly stated he carelessly rushed through his SF-86s and failed to fully explain his use of his first name with combinations of four other family names. He did not show the careful, conscientious attention to detail necessary to properly complete his SF-86s. I conclude Applicant's alleged falsifications of his SF-86s are mitigated. Although he provided incomplete information on his SF-86s, AG ¶ 17(f) applies. The falsification allegations are not substantiated. I am satisfied he did not deliberately and intentionally fail to disclose information about his names with intent to deceive.<sup>3</sup> I find "For Applicant" in the Findings section of this decision with respect to SOR ¶ 1.

### **Foreign Influence**

AG ¶ 6 explains the security concern about "foreign contacts and interests" stating:

if the individual has divided loyalties or foreign financial interests, [he or she] 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.

AG ¶ 7 indicates three conditions that could raise a security concern and may be disqualifying in this case:

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<sup>3</sup>The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).



(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;

(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; and

(d) 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;

Applicant and his spouse live in the same household, and were both born in Iraq. Applicant's mother, four brothers, sister and father-in-law are citizens and residents of Iraq (SOR ¶¶ 2.a to 2.f and 2.h). His brothers and sister work for regional government municipalities (SOR ¶ 2.g). He visited his family in Iraq in 2000 (SOR ¶ 2.k).

Although Applicant's communications with family members living in Iraq are not particularly frequent, his spouse may have more frequent, non-casual communications with family members living in Iraq. "[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at \*8 (App. Bd. Feb. 20, 2002). Applicant has not rebutted this presumption. Applicant's relationship through his spouse and through her with family living in Iraq is sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." Applicant's relationship with his spouse creates a potential conflict of interest between Applicant's "obligation to protect sensitive information or technology and [his] desire to help" his family living in Iraq. Applicant has deep affection for his mother, who is living in Iraq.

The mere possession of close family ties with his spouse and his mother, is not, as a matter of law, disqualifying under Guideline B. However, if he has a close relationship with even one relative, who has a relationship with other family members living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, 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 collection operations against the United States. The relationship of Iraq with the United States, places a significant, but not insurmountable

burden of persuasion on Applicant to demonstrate that his relationships with his spouse, her family and his mother do not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist family living in Iraq.

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).

While there is no evidence that intelligence operatives from Iraq seek or have sought classified or economic information from or through Applicant or his family, nevertheless, his relationship with his spouse and his mother creates a potential conflict of interest because his relationship with them is sufficiently close to raise a security concern about his desire to assist family members in Iraq by providing sensitive or classified information. Department Counsel produced substantial evidence of Applicant's contacts with his spouse and strong affection for his mother and their relationships with family members living in Iraq to raise the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b) and 7(d) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

(a) 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.;

(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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

AG ¶¶ 8(a) and 8(c) have limited applicability. Applicant traveled to Iraq and visited his family in 2000. Applicant has frequent contact with his spouse, who lives with him, and infrequent contact with his mother, who lives in Iraq. Applicant has not established his wife has infrequent contacts with her family members living in Iraq. He has deep affection for his mother, and the infrequency of his contacts with her does not completely mitigate security concerns. AG ¶ 8(a) has some partial applicability because it is his spouse and mother, and not Applicant, who have the extensive contacts with family in Iraq. Because of his spouse and mother's connections to Iraq, Applicant is not able to fully meet his burden of showing there is "little likelihood that [his relationships with his relatives who are Iraq citizens] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) fully applies. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has established that "[he] can be expected to resolve any conflict of interest in favor of the U.S. interest." In 1976, Applicant emigrated from Iran to the United States to flee Saddam Hussein's persecution. In 1991, Applicant became a U.S. citizen, and in 1998, his spouse became a U.S. citizen. His three children are U.S. citizens. Applicant and his spouse have substantial U.S. property, and they do not have any property or investments in Iraq. Most importantly, he has served in Iraq with U.S. Armed Forces in a combat zone. He has shown his patriotism, loyalty and fidelity to the United States.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with his spouse and mother and through them with their families in Iraq. His spouse and mother frequently communicate with family living in Iraq. Some family members have employment with municipal governments in Iraq. There is no evidence; however, that terrorists, criminals, the Iraqi government, or those conducting espionage have approached or threatened Applicant or his family in Iraq or that Iraqi officials have asked Applicant or his family for classified or sensitive information. As such, there is a reduced possibility that Applicant or Applicant's family would be targets for improper Iraqi coercion or exploitation. While the government does not have any burden to prove the presence of such evidence, if such record evidence was present, Applicant would have a very heavy evidentiary burden to overcome to mitigate foreign influence security concerns.

AG ¶¶ 8(d), and 8(e) do not apply. The U.S. Government has not encouraged Applicant's involvement with family members living in Iraq. Applicant is not required to report his contacts with family members living in Iraq.

AG ¶ 8(f) partially applies because Applicant has no interest in property or bank accounts in Iraq. This mitigating condition can only fully mitigate AG ¶ 7(e), which provides, "a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation."

In sum, Applicant's connections through his spouse and mother to family living in Iraq are less significant than his strong connections to the United States. His connections to the United States taken together are sufficient to fully overcome the foreign influence security concerns under Guideline B.

### **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. I have incorporated my comments under Guidelines E and B in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under this guideline, but some warrant additional comment.

There are some facts supporting a foreign influence security concern because of Applicant's connections to Iraq. Applicant and his spouse live in the same household, and both of them were born in Iraq. Applicant's mother, four brothers, his father-in-law, and his sister are still residents and citizens of Iraq. He traveled to Iraq and visited his mother and possibly other family members in 2000. His spouse may have frequent communications with her family members living in Iraq.

A Guideline B decision concerning Iraq must take into consideration the geopolitical situation in Iraq, as well as the dangers existing in Iraq.<sup>4</sup> Iraq is a very dangerous place because of violence from insurgents and terrorists. Insurgents and terrorists continue to threaten the government of Iraq, the interests of the United States, U.S. Armed Forces, and those who cooperate and assist the United States. Applicant recognizes his work with the U.S. Armed Forces endangers his family living in Iraq. The United States and Iraq are allies in the war on terrorism and the United States is committed to the establishment of a free and independent government in Iraq. Iraq and the United States have close relationships in diplomacy and trade.

The circumstances tending to support approval of a clearance for Applicant are more significant. In 1976, Applicant fled Iraq and Iran and settled in the United States. In 1991, Applicant became a U.S. citizen. His spouse, who was also born in Iraq, became a U.S. citizen in 1998. Their three children are U.S. citizens. Applicant returned to Iraq and served with U.S. Armed Forces as a linguist/translator from 2005 to 2007. He volunteered to go on hundreds of dangerous patrols as part of his translator duties. Reliable military personnel serving with him in Iraq laud his duty performance and contributions to mission accomplishment. He is 54 or 55 years old. He is mature and responsible. He has significantly greater contacts or connections with the United States than with Iraq. He has infrequent direct contacts with his relatives living in Iraq. He does not own property in Iraq. When he and his spouse were naturalized as U.S. citizens, they swore allegiance to the United States. He has often put himself in harm's way, working alongside U.S. Armed Forces on numerous operations. He has made significant contributions to national security, fully aware of the risks to himself and his family. All these circumstances demonstrate that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group at coercion or exploitation. See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008). Applicant's strong connections to the United States and especially to his U.S. family, community and his employment as a translator in a combat zone establish "such deep and longstanding relationships and loyalties in the U.S., [he] can be expected to resolve any conflict of interest in favor of the U.S. interest." See Discussion of AG ¶ 8(b), *supra* at pages 11-12.

After weighing the evidence of Applicant's connections to Iraq and to the United States, and all the facts in this decision, I conclude he has carried his burden of mitigating the personal conduct and foreign influence security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole person factors"<sup>5</sup> and supporting evidence, my application of the pertinent factors under the Adjudicative Process, all the evidence in this decision, and my interpretation of my responsibilities under the Guidelines. For the reasons stated, I conclude he is eligible for access to classified information.

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<sup>4</sup> See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole person discussion).

<sup>5</sup> See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

## **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 E: FOR APPLICANT

Subparagraphs 1.a to 1.c: For Applicant

Paragraph 2, Guideline B: FOR APPLICANT

Subparagraphs 1.a to 1.k: 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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Mark Harvey  
Administrative Judge