



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



In the matter of: )  
 )  
----- ) ISCR Case No. 08-02219  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel  
For Applicant: William Savarino, Esquire

May 29, 2009

**Decision**

HARVEY, Mark W., Administrative Judge:

In 1996, Applicant and his spouse fled Iraq and settled in the United States with U.S. State Department assistance. In 2004, Applicant and his spouse became U.S. citizens. Their three children are U.S. citizens. Applicant returned to Iraq in 2007 and 2008, serving with U.S. combat forces as a translator. Applicant has volunteered to return to Iraq to continue his translator duties. 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. Foreign influence security concerns are mitigated. Eligibility for access to classified information is granted.

**Statement of the Case**

On March 22, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) (SF 86) (Government Exhibit (GE) 1). On March 11, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, alleging security concerns under Guideline B (Foreign Influence) (GE 8). 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 March 17, 2009, Applicant responded to the SOR and requested a hearing before an administrative judge (GE 9). Department Counsel was prepared to proceed on April 1, 2009. The case was assigned to me on April 14, 2009. On April 14, 2009, DOHA issued a hearing notice (GE 7). The hearing was held on April 29, 2009.<sup>1</sup> At the hearing, Department Counsel offered six exhibits (GEs 1-6) (Transcript (Tr.) 17), and Applicant offered 13 exhibits (Tr. 18; AE A-M). There were no objections, and I admitted GEs 1-6 (Tr. 17-18), and AEs A-M (Tr. 18-19). Additionally, I admitted the SOR, response to the SOR and the hearing notice (GEs 7-9). I received the transcript on May 18, 2009.

### **Procedural Ruling**

Department Counsel requested administrative notice (AN) of facts concerning Iraq (AN Request with Ex. I to V; Tr. 9-11). Department Counsel provided supporting documents to show detail and context for these facts. At Applicant's request, I took administrative notice of all of the facts in Department Counsel's cover document, subject to verification in the underlying documents (Tr. 10-11; AN I-V). I also indicated, I would take administrative notice of information concerning elections in Iraq, and other pertinent information about the relationship between Iraq and the United States from AN I-V (Tr. 10-11). See the Iraq section in the Findings of Fact of this decision, *infra*.

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).

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<sup>1</sup> Applicant requested an expedited hearing and specifically waived his right to 15 days' notice of the date and location of his hearing (Tr. 12-13).

## Findings of Fact<sup>2</sup>

Applicant admitted the SOR allegations (GE 8) in his response to the SOR (GE 9). 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 42 years old and has worked as a translator for a government contractor since 2007 (Tr. 34, 43). He was born in Kurdistan, Iraq (Tr. 33). Applicant received his education through his college degree in accounting in Kurdistan, Iraq (Tr. 34, 43). In 1990, he was drafted into the Iraqi Air Force (Tr. 90). After nine months of service, he left military service with many of the other Kurds because they did not want to fight against the U.S. Army (Tr. 90-91). After the first Gulf War, Applicant received employment from a U.S. based company with a branch in Kurdistan, Iraq (Tr. 34-35). He worked as an accountant, assistant project manager and project manager (Tr. 35, 37; AE L).

In 1996, Saddam Hussein used the Iraqi Army to attack the Kurdish area of Iraq, and Applicant learned he was going to be arrested (Tr. 39-40). The U.S. State Department did an emergency evacuation of Applicant and his spouse to Guam (Tr. 39-40). Travel and quarters for three months at a U.S. Air Force Base were at U.S. government expense (Tr. 39-41). His son was born in a U.S. hospital in Guam (Tr. 40). The U.S. State Department provided authorization for U.S. employment, and Applicant moved to a state, where he worked in automobile sales (Tr. 42). Applicant has taken courses towards a master's degree in the United States (Tr. 83).

In 2007, Applicant received an interim, Category II Secret clearance (Tr. 44-45). He served in Iraq from April to August 2007 (Tr. 45, 85). He was in an accident, and came back to the United States for surgery (Tr. 45, 88-89). He needed four or five months to recover (Tr. 85). He was ready to return to Iraq, but in May 2008, the corporation that sent him to Iraq lost their U.S. government contract (Tr. 46-47, 86). His return to Iraq was further delayed because of security reasons involving the transfer of his JPAS account from one contractor to another (Tr. 46-47). In the fall of 2008, he worked as a consultant teaching others how to negotiate with Iraqis (Tr. 48-49; AE E). From the end of October to December 2008, he served the U.S. Department of Defense in Iraq as a translator, working for a new U.S. government contractor (Tr. 87, 89).

Applicant married in 1996 in Iraq (Tr. 37, 38). All three of his children were born in the United States and currently live in the United States (Tr. 50, 78). In February 2004, Applicant and his spouse became U.S. citizens (Tr. 51, 91-92). Applicant's spouse does not work outside their home (Tr. 52). He told his wife not to discuss his work for the United States government with family members (Tr. 81-82). His spouse talks to her family in Iraq at least once a month (Tr. 96, 97). Applicant does not intend to live permanently in Iraq (Tr. 82).

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<sup>2</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.

Applicant's father is deceased, and his mother has not remarried (Tr. 52-53). His mother, who is a citizen of Iraq, moved to the United States in 1998 (Tr. 92). She has resided with Applicant in the United States since at least March 2007 (Tr. 94-95; SOR ¶ 1.a; SOR response). Applicant provides her food and shelter, and provides her funds to visit her family in Iraq (Tr. 94-95). She currently has a green card (Tr. 51, 93; SOR response). She definitely intends to apply to become a U.S. citizen as soon as she is eligible (Tr. 52). She has returned to Iraq to visit her family about six or seven times over the last ten years (Tr. 93). She has stayed in Iraq on her post-1998 visits from 15 to 90 days (Tr. 94).

Applicant's sister and brother-in-law are citizens and residents of Kurdistan-Iraq (Tr. 53; SOR ¶ 1.b; SOR response). She is a teacher in a trade school (Tr. 53). Applicant talks to his sister about every two or three months, usually when his mother calls her (Tr. 79). He does not talk to his brothers-in-law or sister-in-law (Tr. 79). One of his brothers-in-law is employed by a small import and export business (Tr. 54; SOR ¶ 1.c; SOR response). Another brother-in-law and a sister-in-law are citizens and residents of Kurdistan-Iraq (Tr. 54-55). His sister-in-law is an engineer, and he is unsure what her spouse does for a living (Tr. 54-55).

Applicant's father-in-law and mother-in-law are citizens and residents of Iraq (SOR ¶ 1.d). He only talks to his father-in-law or mother-in-law when his wife happens to call them (Tr. 79). He saw them about three years ago when he went to Iraq (Tr. 97). He might talk to them about every three months (Tr. 80). His father-in-law is 72-years-old and retired (Tr. 55). He lives on rent accruing from shops and land (Tr. 56, 98). His mother-in-law has never worked outside her home (Tr. 56).

None of Applicant's SOR-listed family members work for a foreign military or have ties to a foreign government (Tr. 56). He owns his own home in the United States, and does not own any property in Iraq (Tr. 77).

Applicant traveled to Kurdistan-Iraq in April 2000, September 2002, March 2005, and November 2006 (Tr. 57-60). He went to Iraq to visit his family. In 2006, he had a job interview in Iraq (Tr. 57-60; SOR ¶ 1.e; SOR response). He was offered employment; however, he decided not to take the job because the pay was inadequate (Tr. 58). He has never been questioned by Iraqi authorities or the Iraqi police about his U.S. employment (Tr. 60).

Applicant decided to become a translator to pay back the United States for providing sanctuary for himself and his family (Tr. 44). When serving in Iraq as a translator, he was located in a part of Kurdistan-Iraq that was very dangerous (Tr. 61-62). They went on missions in military vehicles, such as helicopters or HMMWVs (Tr. 62). He has been out when shooting occurred; however, he could not attest that anyone shot at him personally (Tr. 98). When on patrols, he wears a military uniform, body armor and a helmet (Tr. 99-100). In 2007, he was photographed shaking hands with General Petraeus (Tr. 63; AE A). At that time, Applicant worked in the same building as General Petraeus and translated for him on one occasion (Tr. 63-64). He also worked for the Criminal Court in Iraq to help build cases (Tr. 64-65). If the enemy attempted to

pressure him for classified information by threatening his family, he would report the threat to his commander (Tr. 76). He is ready to immediately return to Iraq to support the troops and his family (Tr. 100). He thought he could be back in Iraq within a week of having his clearance restored (Tr. 100).

## **Character Evidence**

Applicant's program manager (PM) provides translator support to several sensitive Department of Defense entities (Tr. 21-22). PM has a Top Secret clearance with access to sensitive compartmented information (Tr. 22). He has known Applicant for about a year in a professional, but not a personal capacity (Tr. 22-23). Applicant provides translator services in Kurdish and modern Gulf-dialect Arabic (Tr. 22). When Applicant came to work for PM, he had an interim Secret clearance (Tr. 23). Applicant worked out of a Forward Operating Base (FOB) in Iraq (Tr. 24). Applicant's duties in Iraq were hazardous as he interfaced with counterintelligence, human sources in field locations (Tr. 24-25). Outside the FOB, he went on armed patrols, where people were injured and killed in combat operations (Tr. 25). He did not directly supervise Applicant (Tr. 26). He received information from military field officers about Applicant's work product and duty performance (Tr. 26). Applicant received exceptional accolades from the field commander about his ability, dedication and contributions to the mission (Tr. 26-27). His performance in a combat zone was described as "amazing" and "astounding" (Tr. 31).

Applicant took a polygraph examination in connection as part of the processing of his file for consideration of a Top Secret clearance (Tr. 28). On March 13, 2009, Applicant passed a full-scope polygraph examination (Tr. 28-29). Applicant carefully follows security rules (Tr. 29-30). PM would like to have Applicant return to work for his company (Tr. 30). Applicant is very trustworthy and reliable (Tr. 31).

In 2008, Applicant received two very strong letters of support from his commander, and his unit's operations officer because of his assistance to mission accomplishment in Iraq (Tr. 66-68; AE C, AE D). They described him as being "extremely hard working and a true team player" (AE C), being very knowledgeable (AE D), having exceptional leadership (AE D), and being a "superb asset" (AE C). They recommended his continued service in Iraq and expressed their hopes that they could continue to serve with him in the hazardous combat zone.

## **Iraq<sup>3</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>3</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. Although some areas of Iraq are more peaceful and less susceptible to terrorist attacks than others, 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 United States 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 Applicant's 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 [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 Guideline B (Foreign Influence) is the relevant security concerns with respect to the allegations set forth in the SOR.

### **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:

(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, his spouse and his mother, all live in the same household, and all three of them were born in Iraq. Applicant was educated through completion of his bachelor's degree in Iraq. He briefly served in Iraq's Air Force before deserting prior to the U.S. attack in the first Gulf War. His mother has a U.S. green card, but is still a citizen of Iraq. Applicant traveled to Kurdistan-Iraq in April 2000, September 2002, March 2005, and November 2006. Although Applicant's communications with family members living in Iraq, are not particularly frequent, his spouse and his mother do have 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 mother and through them 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 and mother 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.

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 and mother, who have relationships with family living in Iraq 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.<sup>4</sup>

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 mother and their relationship 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

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<sup>4</sup> An applicant with relatives in Iran, for example, has a much heavier burden to overcome than an applicant with relatives living in Iraq. See ISCR Case No. 02-13595 at 3 (App. Bd. May 10, 2005) (stating an applicant has "a very heavy burden of persuasion to overcome the security concerns" when parents and siblings live in Iran). See also ISCR Case No. 04-11463 at 4 (App. Bd. Aug. 4, 2006) (articulating "very heavy burden" standard when an applicant has family members living in Iran); ISCR Case No. 07-12471 at 9 (A.J. May 30, 2008) (listing numerous recent cases involving U.S. citizens with Iranian connections whose clearances were denied, and citing no recent cases where the Appeal Board affirmed the grant of a clearance for someone with immediate family members living in Iran).

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) partially applies; however, AG ¶¶ 8(c), 8(d), and 8(e) do not apply because the U.S. government has not encouraged Applicant's involvement with family members living in Iraq. Applicant traveled to Kurdistan-Iraq and visited his family in April 2000, September 2002, March 2005, and November 2006. Applicant has frequent contact with his spouse and mother, and they have frequent contacts with family members living in Iraq. 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 [her 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 1996, the United States gave Applicant and his spouse sanctuary when they fled Saddam Hussein's persecution. In 2004, Applicant and his spouse became U.S. citizens. Their three children are U.S. citizens. Applicant and his spouse have substantial U.S. property and investments, and they do not have any property or investments in Iraq. Most importantly, he has served in Iraq in 2007 and 2008 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 his family living in Iraq. There is no evidence; however, that terrorists, criminals, the Iraqi government, or those conducting espionage have approached or threatened Applicant 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(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 Guideline 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, his spouse and his mother, all live in the

same household, and all three of them were born in Iraq. Applicant's mother is still a citizen of Iraq. He traveled to Kurdistan-Iraq and visited his family in April 2000, September 2002, March 2005, and November 2006. He primarily visited his mother, who moved to the United States in 2007. His spouse and mother have frequent communications with family members living in Iraq. Applicant was educated through completion of his bachelor's degree in Iraq. He briefly served in Iraq's Air Force.

A Guideline B decision concerning Iraq must take into consideration the geopolitical situation in Iraq, as well as the dangers existing in Iraq.<sup>5</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. military 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 1996, Applicant and his spouse fled Iraq and settled in the United States with U.S. State Department assistance. In 2004, Applicant and his spouse became U.S. citizens. Their three children are U.S. citizens. Applicant returned to Iraq in 2007 and 2008, serving with U.S. combat forces as a translator. He volunteered to return to Iraq to continue his translator duties. Reliable military personnel serving with him in Iraq laud his duty performance and contributions to mission accomplishment. He is 42 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. He and his spouse are naturalized U.S. citizens and swore allegiance to the United States. He has often put himself in harm's way in 2007 and 2008, working alongside U.S. armed forces in numerous operations. He has made significant contributions to national security, fully aware of the risks to himself and his family. He strongly wants to return to his duties with U.S. troops. 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 especially 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 9-10.

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

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<sup>5</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).

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>6</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.

### **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
Subparagraphs 1.a to 1.c:	For Applicant

### **Conclusion**

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

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Mark W. Harvey  
Administrative Judge

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<sup>6</sup>See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).