



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



In the matter of:)
)
) ISCR No. 08-05274
)
)
Applicant for Security Clearance)

Appearances

For Government: Stephanie C. Hess, Esq., Department Counsel
For Applicant: *Pro Se*

May 12, 2009

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

History of Case

On August 15, 2005, Applicant submitted his Security Clearance Application (SF 86). On November 7, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on November 30, 2008, and requested a hearing before an administrative judge. DOHA assigned the case to me on February 12, 2009, and issued a Notice of Hearing on February 26, 2009, scheduling the hearing for April 8, 2009. I convened the hearing on said date. Department Counsel offered Government Exhibits (GE) 1 and 2 into evidence, which were admitted without objection. Applicant testified and offered Applicant Exhibits (AE) A through F into evidence that were admitted without objection. DOHA received the transcript of the hearing (Tr.) on April 15, 2009.

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. 12) The request and the attached documents are included in the record as Hearing Exhibits (HE) I through V. Applicant did not object to my consideration of those Exhibits. Hence, the facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his Answer, Applicant admitted the factual allegations set forth in SOR ¶¶ 1.a through 1.d.

Applicant is 54 years old. He was born in Iraq and went to high school there. From September 1974 to September 1977, he attended an Iraqi university where he earned a bachelor's degree in agricultural engineering. In 1978, he married his wife, an Iraqi citizen at the time. As required by the Iraqi government, he began basic training in the army in December 1978. He left the army without permission in February 1979 and went to Kuwait in October 1979. His wife joined him four to six months later. They lived there until late 1985, when they came to the United States on visitors' visas. They stayed for a couple months, during which time they applied for immigrant visas with the help of Applicant's brother, who was residing in the United States. (GE 2).

Upon being denied U.S. immigrant visas, Applicant and his wife went to Canada in early 1986, as refugees, while waiting for U.S. permanent resident status. In 1990, he obtained Canadian citizenship, as did his wife and two sons. One of his sons was born in Iraq and one son was born in Kuwait. His daughter was born in Canada. They lived and worked in Canada until October 1996 when they moved to the United States after being granted U.S. resident alien status. In August 2004, Applicant and his family became naturalized U.S. citizens.

After arriving in the United States in 1996, Applicant worked as a truck driver and his wife found a position in a bank. In February 2004, he obtained a position with a federal contractor to work with the U.S. Coalition Forces (Forces) to help organize the

Iraqi elections. He worked in Iraq until July 2004, when he returned to the United States and resumed his previous job as a truck driver. (GE 2) In August 2005, Applicant was hired by a federal contractor as a bilingual, bi-cultural agricultural advisor for the U.S. Department of Agriculture. In that role, he has been assisting the Iraqi government in the improvement of its agricultural resources and conditions. (Tr. 24) There is no evidence that Applicant returned to Iraq until February 2004 when he was employed by the Forces.

Applicant and his family maintain dual citizenship with Canada. He never voted in any Canadian election and does not hold any property or have any financial interests in Canada. He does not travel to Canada to maintain privileges of citizenship. The last time he used his Canadian passport was to travel to Iraq between March 2004 and July 2004, when he was employed by the Forces and sent to Iraq. He destroyed that passport in September 2004, when he received his U.S. passport (after becoming a U.S. citizen in August 2004). He has traveled to Canada periodically for a vacation, using his state's driver license or U.S. passport. His last visit was in December 2008 for a short vacation. (GE 1) He has no intention of exercising any rights as a Canadian citizen.¹ (GE 2)

Applicant's parents were born in Iraq. They are deceased. Both of them were teachers. (Tr. 34) He is one of six children, four boys and two girls, all of whom were born in Iraq. One of his brothers was killed during the Iraq-Iran war. One brother is a U.S. naturalized citizen and resident of the United States. He is a practicing physician. His third brother is a citizen resident of Iraq. In August 2008, that brother retired from his government position as an accountant for the Ministry of Defense. (Tr. 38) Applicant saw him about six months ago in the Green Zone of Iraq because both of their offices are located in the international area. (Tr. 39) He speaks to his brother about once every month and a half. (*Id.*) Applicant's two sisters are resident citizens of Iraq. One of them is a widow and the other is single. Neither of them works. (Tr. 29) He rarely sees them because they live outside of the Green Zone. He speaks to them every couple months. (Tr. 40) The last time he saw them was in 2006 when he visited their city on business. They do not know that he works in Iraq for the U.S. Department of Agriculture. (Tr. 41) His wife has two sisters, who are resident citizens of Iraq. He does not have any contact with them. He does not know how often his wife speaks to them. She has not seen her sisters since leaving Iraq in 1979. (Tr. 43)

Applicant owns two houses in the United States and has U. S. bank accounts. (Tr. 27) His wife is a manager of a bank. (Tr. 26) His two sons work for U.S. companies and his daughter goes to cosmetology school. (Tr. 48) He does not own any property in Iraq. (Tr. 55) There is no derogatory information in the record concerning his police or financial records. He has never been fired from a job. He has never been arrested. He has never used illegal drugs, or been involved in an alcohol-related incident. (GE 1)

¹The SOR did not raise any security concerns under Guideline C, Foreign Preference.

Applicant submitted several exhibits, setting forth his accomplishments while working in Iraq. In May 2004, the Governance Coordinator for the Coalition Provisional Authority recommended Applicant for a position with the new U.S. Embassy in Baghdad. The Coordinator noted that “During the outbreak of criminal violence last month, you continued your work, at great personal risk, which ensured that we were able to make rapid progress when security was restored.” (GE 2) In June 2004, the Administrator for the Coalition Provisional Authority thanked him for his efforts in working to establish a democracy. (AE D) In June 2006, the Director of the Civil Military Operations Directorate recognized Applicant’s talents and assistance. He wrote, “Through [Applicant’s] connections with the Iraqi government and with his ability to knowledgably communicate about agricultural issues and especially in Arabic, he has been able to help the Coalition Forces forge forward in developing national level policies and assist in building a cohesive partnership between the two governments in the area of Agriculture.” (GE 2)

In 2007, Applicant received a 2006 Foreign Agricultural Service Honorary Award for “selfless dedication to rebuilding a strong relationship with Iraq and cultivating an environment of trust and partnership.” (AE A) The U.S. Agriculture Attaché submitted a strong Letter of Recommendation, referencing Applicant’s work from September 2006 to February 2009. He noted that Applicant had passed through security and background checks. He stated, “Performing as much more than just a Bilingual/Bicultural advisor, we rely on [Applicant] as a key interlocutor for our diplomatic engagements . . . His performance has been all the more remarkable given the stressful, dangerous, and chaotic working conditions in Iraq.” (AE B) The Senior Strategic Policy Advisor at the U.S. Embassy Baghdad submitted a letter, having worked with Applicant for more than two years. In February 2009, he wrote that Applicant “is an individual with tremendous professional and personal worth to our office with the U.S. Embassy in a war-zone theater of operations. This letter of introduction will serve as my highest recommendation for a most valued and loyal employee.” (AE C)

Applicant credibly and sincerely asserted his pride of U.S. citizenship and desire to continue his work with the U.S. Department of Agriculture. “I am American . . . My loyalty is for this country.” (Tr. 47) In his closing argument, he stated:

I know, ma’am, the Iraq is dangerous country, but we have to realize one day this country is going to be normal country, and if we don’t take the risk to make the change I don’t think anybody can make the change. And we are the people we could make the change to help the U.S. government. And we [have] been working so hard to achieve this, this goal. (Tr. 53)

I take administrative notice of the facts set forth in the Hearing Exhibits, including the fact that in 2003, the United States led a coalition to remove Saddam Hussein from power in Iraq. After free elections, Iraq’s new government took office. Despite the elections and new government, Iraq remains engulfed in violence, perpetrated by Al Qaeda terrorists and other insurgents. Numerous attacks and kidnappings have targeted the U.S. Armed Forces, contractors, and other civilians, as well as Iraqis. Even

with aggressive governmental action against terrorists, the threat of terrorism in Iraq remains, although there has been a decrease in violence since January 2008. “An improved security environment has resulted from the combined factors of Coalition troop surge and sustained presence, the declared ceasefire by Muqtada al-Sadr’s Jaysh al Mahdi militia in August, improved Iraqi Security Forces proficiency, and increasing popular support for the actions of Iraqi Forces against AQI and other extremist groups.” (HE IV). Terrorist groups conduct intelligence activities as effectively as state intelligence services.

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(a), 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.

Directive ¶ E3.1.14 requires the Government to 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 clearance 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 adverse to an applicant 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 *a/so* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concerns relating to the guideline for foreign influence are set out in AG ¶ 6:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 describes two conditions that could raise a security concern and may be disqualifying:

(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;² and,

(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.

² 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).

Since leaving Iraq, Applicant has maintained telephone contact with his brother and two sisters, who are residents and citizens of Iraq. He does not maintain contact with his two sister-in-laws. After he started working in Iraq in 2005, Applicant periodically saw his brother who worked in the same international complex where he worked. He speaks to him approximately once a month. He calls his sisters every couple months but has not seen either of them since 2006. His sisters do not know that he works for the U.S. government in Iraq. Applicant's connections to his family in Iraq could create a potential conflict of interest between his security obligations and desire to help them, only in a situation wherein they were taken hostage or otherwise threatened with harm if he did not cooperate. Since retiring, his brother is no longer connected with the Iraqi government. His sisters do not work. None of them have positions in which they could otherwise benefit from his access to sensitive information or technology. However, under either disqualifying condition, security concerns in this case could arise in connection with the potential that hostile forces might seek protected information from Applicant by threatening harm to his family members in Iraq.

The Government produced substantial evidence of these disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove mitigation of the resulting security concerns. AG ¶ 8 provides conditions that could mitigate security concerns. Those with potential application in this case are:

- (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; 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.

The current positions and activities of Applicant's family members in Iraq do not involve the government or military and they would have no interest in acquiring protected information. Only their physical presence creates the potential that their interests could be threatened to the point that Applicant would confront a choice between their interest and those of the United States. Hence, AG ¶ 8(a) has some application.

Applicant produced significant evidence establishing 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 United States. He has lived in the United States since 1996 and has not returned to Iraq until his employment with the U. S. Coalition Forces in February 2004. His wife and children are U.S. citizens, residing and working in the United States. He owns property and holds bank accounts in the United States. He worked for a U.S. company before starting his position with a federal contractor. He does not own property in Iraq and has had limited contact with three siblings living there. While in Iraq, he has willingly risked his life to support the U.S. efforts. There is no evidence that he has connections or contact with any people other than his family members. He refers to himself as an “American.”

Applicant maintains ongoing, albeit sporadic, communication with his siblings in Iraq. Hence, AG ¶ 8(c) cannot apply, as those contacts are sufficiently frequent and not casual.

“Whole Person” Concept

Under the whole person concept, an administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of the applicant’s conduct and all the circumstances. 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.

According to 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 ties to the U.S. relative to his [or her] ties to a foreign country; his or her 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. Three circumstances weigh against Applicant in the whole person analysis. First, there is a significant risk of terrorism and human rights abuses in Iraq. 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 Applicant's siblings to obtain such information. Second, he had numerous connections to Iraq before he immigrated to the United States in 1996. Following his birth, he spent his formative years there. He was educated at an Iraqi college, married there, and has one son that was born there. Third, three of his siblings and two in-laws remain resident citizens of Iraq.

Substantial mitigating evidence weighs in favor of granting Applicant a security clearance. He is a mature person, who has lived in the United States for 12 years, and has been a naturalized citizen for almost five years. His spouse and children are naturalized U.S. citizens. Out of his sense of patriotism for the United States in its endeavors in Iraq, he has worked for the U.S. government as an Arabic-speaking advisor. His ties to the United States, which he refers to as his country, are much stronger than his ties to his three siblings or two sister-in-laws living in Iraq. There is no evidence he has ever taken any action that could cause potential harm to the United States. He takes his loyalty to the United States seriously, and he has worked diligently and impressively for three years in an important capacity for the U.S. efforts. His supervisors and colleagues assess him as loyal, trustworthy, conscientious, and responsible, giving him excellent evaluations and praising his dedication to the cause of freedom in Iraq. He is a good family member, employee and U.S. citizen. After leaving Iraq in 1979, he never returned until he worked with the U.S. forces in February 2004, which was prior to his obtaining U.S. citizenship.

No witnesses recommended denial of Applicant's security clearance. There is no derogatory information about him in the record. There is evidence that he has successfully worked in high-risk circumstances and made significant contributions to the United States in its agricultural efforts in Iraq. He credibly asserted his allegiance to the United States.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole person, including Applicant's commendable performance as a bi-cultural translator and advisor in Iraq, I conclude Applicant has fully mitigated the security concerns pertaining to foreign influence.³ Overall, the record evidence leaves no doubt as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline B.

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:

³I conclude that the whole person analysis weighs heavily toward approval of his security clearance. Assuming a higher authority reviewing this decision determines the mitigating conditions articulated under AG ¶ 8 do not apply and severs any consideration of them, I conclude the whole person analysis standing alone is sufficient to support approval of a security clearance in this case.

Paragraph 1, Guideline B:

FOR APPLICANT

Subparagraphs 1.a through 1.d:

For Applicant

Conclusion

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

SHARI DAM
Administrative Judge