



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

SSN:

Applicant for Security Clearance

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ISCR Case No. 08-05686

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel  
For Applicant: B. Daniel Lynch, Esquire

February 23, 2010

**Decision**

WESLEY, Roger C., Administrative Judge:

**History of Case**

On April 22, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing reasons why DOHA could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. 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 (AGs) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant responded to the SOR on May 19, 2009, and requested a hearing. The case was assigned to me on June 30, 2009, and was scheduled for hearing on October 8, 2009. A hearing was held on the scheduled date. At the hearing, the government's case consisted of six exhibits; Applicant relied on two witnesses (including himself) and

15 exhibits. The transcript (Tr.) was received on November 9, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access classified information is granted.

Besides its six exhibits, the government requested administrative notice of five documents: *Background Note: Iraq*, U.S. Department of State (February 2008); *Travel Warning: Iraq*, U.S. Department of State (June 2008); *Country Specific Information, Iraq*, U.S. Department of State (April 2008); *Country Reports on Terrorism 2007, Chapter 2: Middle East and North Africa Overview*, U.S. Department of State (April 2008); *Country Reports on Human Rights Practices-2008: Iraq*, U.S. Department of State (February 2009).

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 (App. Bd. April 12, 2007); ISCR Case No. 05-11292 (App. Bd. April 12, 2007). Administrative notice is appropriate for noticing facts or government reports that are well known. See *Stein*, Administrative Law, Sec. 25.01 (Bender & Co. 2006). For good cause shown, administrative notice was granted with respect to the above-named background reports addressing the geopolitical situation in Iraq. Administrative notice was extended to the documents themselves, consistent with the provisions of Rule 201 of Fed. R. Evid. This notice did not foreclose Applicant from challenging the accuracy and reliability of the information contained in the reports addressing Iraq's current status.

### **Summary of Pleadings**

Under Guideline F, Applicant is alleged to have (a) filed a petition for Chapter 13 relief in March 2002, which was dismissed in July 2003 for failure to meet requirements; (b) petitioned for Chapter 7 bankruptcy relief in January 1997 (discharged in April 1997); (c) owned property that was foreclosed on to cover a \$412,000 first mortgage and a \$102,000 second mortgage, and (d) became delinquent to a consumer creditor in the amount of \$722.

Under Guideline B, Applicant is alleged in the SOR to have: (a) a spouse who is a dual citizen of the United States and Iraq who resides in the United States; (b) parents who are Iraqi citizens residing in the United States, (c) a brother who is an Iraqi citizen residing in the United States, (d) a sister who is an Iraqi citizen residing in Iraq; and (e) a mother-in-law who is an Iraqi citizen residing in the United States.

In his response to the SOR, Applicant admitted most of the allegations. He admitted to filing Chapter 13 and Chapter 7 petitions and owning property that was foreclosed on in 2006. He denied any debt to the creditors identified in subparagraphs ¶¶ 1.c through 1.f. He claimed that creditors 1.e and 1.f are barred from any deficiency recourse by virtue of creditor 1.e's reliance on the state's non-judicial foreclosure procedures that carry no recourse. He claimed no liability to creditor 1.c by virtue of the latter's lack writing off of the debt.

## **Findings of Fact**

Applicant is a 44-year old Arabic linguist for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

### **Background**

Applicant was born and raised in Iraq. He immigrated to the United States (U.S.) to pursue his schooling. He became a naturalized citizen in 1993 (see exs. 1 and 2).

Applicant married his first spouse In October 1990; they divorced in March 1993 (see ex. 1). Applicant married his current spouse in 1996 (ex. 1). They have two children: ages 9 and 12 (tr. 83). His current spouse was born in Iraq and immigrated to the U.S. in 1975 (Tr. 77). She became a naturalized citizen in 1996 (ex. 1; Tr. 77, 108) and relinquished her Iraqi citizenship (Tr. 78).

Applicant's parents were born and raised in Iraq and immigrated to the U.S. to join Applicant and his family (Tr. 90, 109). His father joined the British army in 1946 and became a warrant officer before transitioning to Iraq's army following Britain's withdrawal (see ex. 2). Neither of his parents are entitled to any pensions from the Iraqi government. They became naturalized U.S. citizens and retain their dual citizenship with Iraq.

Applicant has two brothers who immigrated to the U.S. and currently reside in this country. His youngest brother became a naturalized U.S. citizen, while his oldest brother remains an Iraqi citizen who is registered as an alien in the U.S. (ex. 1; Tr. 98-99). His older brother served in the Iraqi army in 1986 and immigrated to the U.S. in March 1992 (see ex. 2).

Applicant has three sisters. His two youngest sisters are naturalized U.S. citizens who reside in the U.S. (see ex. 1). His oldest sister retains her Iraqi citizenship and still resides in Iraq (ex. 1). Her husband belongs to a Christian religious sect, which is a minority in Iraq (Tr. 110). He served in the Iraqi military under mandatory constriction rules in force under Saddam Hussein (Tr. 111). Neither his oldest sister nor her husband receive any pensions from the Iraqi government (Tr. 111).

Applicant maintains infrequent contact with his oldest sister for security reasons, and has little contact with his wife's parents (Tr. 112). He knows of no reason why either his sister or her husband would be at risk to coercion, pressure, or influence (Tr.112).

### **Iraq's country status**

Iraq is a country of 27 million people that is broken down along ethnic and religious lines: Shiites, Sunni, Kurds and Turkoman comprise the predominant ethnic and sectarian groups. Once known as Mesopotamia (the fertile crescent), Iraq is bordered by Kuwait, Iran, Turkey, Syria, Jordan, and Saudi Arabia (see U.S. Department of State,

*Background Note, supra*, at 2-3; see also ex. 14). At the end of World War I, Iraq became a British-mandated territory, and founding member of the Arab League (*id.*).

General Abdul Karim Qasim assumed power in a July 1958 coup and held power for five years before succumbing to the Ba'ath Party's takeover of the Iraqi government, and Hasan al-Bakr's selection as prime minister. When Bakr resigned in 1979, Saddam Hussein assumed the reigns of power. Under Saddam Hussein's direction, Iraq launched a major invasion of its neighbor, Iran in the 1980s (*see id.*). Iraq declared victory in 1988 and survived to claim the largest military establishment in the region. Iraq then turned its forces to mounted attacks against the ongoing Kurdish rebellion by Kurdish elements in the northern mountains of Iraq.

Iraq invaded Kuwait in August 1990, and was repelled by a U.S.-led coalition in February 1991 (*see U.S. Department of State, Background Note, supra*, at 4). After the war, the UN Security Council required the Hussein regime to surrender to the coalition and submit to UN inspections. When the Ba'ath regime refused to fully comply, the Security Council invoked sanctions to prevent further weapons of mass destruction (WMD) development, and to enforce Iraq's surrender terms. Coalition forces employed limited no-fly zones in southern and northern Iraq and a limited no-drive zone in southern Iraq to prevent the regime from invading Kuwait again (*id.*).

In 2003, A U.S.-led coalition invaded Iraq and succeeded in removing Saddam Hussein and his Ba'athist regime from military and political power (*see U.S. Department of State, Background Note, Iraq-2007, supra*, at 3). After two years of operations under a provisional authority, Iraq's new government assumed office in March 2006 (with the approval of the U.S. Government), following free elections (*see id.*).

Notwithstanding the election of a new national government with U.S. backing, violence continued to envelop the country. This violence was fueled and perpetrated by Al Qaeda terrorists, Sunni insurgents, and Shiite militias and death squads (*see U.S. Department of State, Country Reports on Human rights Practices - 2007, Iraq, supra*, at 1; U.S. Department of State, *Country Reports on Terrorism 2007, Chapter 2, supra*). State Department reports document human rights abuses that include a "pervasive climate of violence, misappropriation of official authority by sectarian, criminal and insurgent groups; arbitrary deprivation of life, disappearances, torture and other cruel, inhumane or degrading treatment or punishment" (*see U.S. Department of State, Country Reports on Human rights Practices - 2007, Iraq, supra*, at 1).

Since March 2006, the Government of Iraq has been comprised of a broad coalition of political alliances representing the Shiite, Sunni and Kurdish blocs (*see U.S. Department of State, Background Note, Iraq-2007, supra*, at 8). While power sharing arrangements between the President's Law Party, the Kurds, and the Sunni minorities (that include the Awakening Councils dispersed throughout Iraq) have been implemented, sectarian divisions still exist. In this still very fragile political environment in Iraq, there are substantiated reports of human rights abuses that continue to underscore a pervasive climate of violence.

Economically, Iraq's economy continues to be dominated by the oil sector, as it has for the past half century since the completion of new pipelines to Lebanon in 1949, and to Syria in 1952 (see ex. 14). As a result of the U.S.-led invasion in 2003, much of Iraq's oil refining capabilities were shuttered. The rebuilding of oil infrastructure and utilities infrastructure has continued to expand since 2004 with U.S. aid and support, despite setbacks from insurgent activity.

Proposed oil revenue sharing legislation still awaits passage, however, and at the moment, there are no good estimates of when such legislation will be approved and implemented. For the foreseeable future, the national government can be expected to continue to seek the passage and implementation of a revenue sharing law to strengthen and encourage the development of this important sector (see U.S. Department of State, *Background Note, Iraq-2007, supra*, at 9).

Despite recent improvements in its security enforcement efforts, Iraq remains a very dangerous, volatile and unpredictable country. The U.S. State Department continues to strongly warn U.S. citizens against traveling to Iraq (see U.S. Department of State, *Travel Warning, Iraq, supra*, at 1). Attacks against military and civilian targets throughout Iraq continue and include sites and facilities where foreign tourists frequently visit: hotels, restaurants, police stations, check points, foreign diplomatic missions, international organizations, and other locations with expatriate personnel (*id.*).

### **Applicant's finances**

Between September 1990 and March 2003, Applicant worked as laser operator for a private firm (see ex. 1). In 1997 he was involved in an automobile accident and suffered a traumatic back injury that disabled him from working. Due to extended unemployment conditions over a nine-month period, he and his wife fell behind in their credit card debts (Tr. 104). They petitioned for Chapter 7 bankruptcy relief in January 1997. They were discharged in bankruptcy in April 1997 (see exs. 2 and G Tr. 78-79, 104).

In March 2002, Applicant suffered a serious back injury and was laid off from one of his two jobs. With his disability stemming from his back injury, he was out of work for an extended period of time (Tr. 79, 105).

Faced with demands from their creditors holding over \$15,000 in past due debts that they could not pay, Applicant and his wife petitioned for Chapter 13 relief in March 2002 (Tr. 79). When he recovered from his disability and found he could pay his scheduled debts directly, he and his wife requested the dismissal of their Chapter 13 petition (see ex. H; Tr. 79-80). The bankruptcy court, in turn, dismissed their Chapter 13 petition in July 2003 ( ex. H). Applicant's credit reports reflect no delinquent accounts preceding the filing of his Chapter 13 petition (see exs. 3 through 6, I and J).

Between February 2003 and 2009, Applicant served as a civilian contractor for U.S.-Iraqi forces in Iraq (see ex. 1; Tr. 105-06). During his extended six-month

deployments, he deferred to his wife to raise his children and manage their finances (Tr. 79-80).

Applicant and his wife purchased a home in their state of residence in 2004 for \$450,000 (Tr. 107, 114). They financed their purchase with a first mortgage of \$412,000 secured by their home with the lending institution identified in subparagraph 1.e (creditor 1.e) of the SOR. They used the proceeds from the sale of their other home to make their required down payment (Tr. 107-08, 114, 147).

In October 2005, Applicant and his wife refinanced their first mortgage with creditor 1.e in the amount of \$412,000 (see exs. 3 and 6; Tr. 115-16, 148-50). With the same lender they took out a home equity loan in the amount of \$103,000 and secured it with a second mortgage on the property with creditor 1.f. They used the proceeds to finance the remodeling of their home. Documentation of their use of the proceeds was not provided, and it is not clear whether all of the proceeds were used on restorations and upgrades of their home. Records document that creditor 1.f sold its second mortgage in June 2006 to creditor 1.c (see exs. 3, 4, M and O; Tr. 116-17, 150-51).

When Applicant was away on his deployments, his wife often encountered difficulties in adjusting to his absence and maintaining their household (Tr. 81-82). Uncomfortable in her role as a single parent managing their finances, she moved out of their home and into a rented home (Tr. 80). Once out of their home, she quit making their monthly mortgage payments (Tr. 82).

In March 2006, the first trust deed holder (creditor 1.e) notified Applicant and his wife of their default on the note secured by the first trust deed and the first trust deed holder's intention to foreclose (ex. 2; Tr. 83). When Applicant learned of the first trust deed holder's intentions, he returned home to salvage the situation (Tr. 83). Facing deteriorating market conditions, he tried to arrange a short sale with the first trust deed holder (Tr. 83). The first trust deed holder accepted Applicant's short sale offer (see ex. 2; Tr. 83).

In December 2006, Applicant completed a sale agreement with a prospective buyer who agreed to pay \$407,000 for their home (see exs. 2 and K). The buyer put up a \$3,000 good-faith deposit to be held with an escrow firm pending a title search (see ex. 2). When Applicant could not persuade the second trust deed holder to agree to the short sale without recourse, Applicant agreed to void the escrow and return the \$3,000 earnest money deposit to the buyer (exs. 2 and K).

Unable to sell his home and discharge the two mortgages on the property, Applicant and his wife resigned themselves to losing their home to foreclosure. Records show that Applicant's home was foreclosed under his state's non-judicial foreclosure procedures in March 2007. The property only produced a sale price of \$341,900 at the conducted foreclosure sale in November 2007, however, which was not enough to cover the \$103,000 balance owing on creditor 1.c's secured home equity. Because Applicant

and his wife did not have any mortgage insurance to cover their second trust deed, they remain potentially liable on this loan indebtedness (Tr. 120-22).

To date, Applicant and his wife have not been pursued by creditor 1.c for any deficiency balance. Records show that creditor 1.c charged off the debt in March 2009 (see exs. 5 and 6). Applicant made several attempts to obtain loan information from this creditor, but to no avail (Tr. 85-86, 102). This creditor could find no record of any loan or mortgage covering a home equity loan (see ex. F; Tr. 102). Applicant has never been provided a Form 1099-C from any of his lenders (Tr. 128). Should either or both creditors furnish him 1099-C forms, he assures he will be able to cover any taxes due and owing (Tr. 128). He has solid current credit reports to corroborate his assurances (see exs. I through J).

Records show an additional outstanding debt with creditor 1.d (see ex. 3). This is listed as an account opened in August 1998 and later transferred or sold with an existing delinquency balance of \$722. Whether or not this account was satisfied by Applicant under another creditor's name is not clear. Applicant denies any knowledge of this account, and the government has no other documentation to show it is an unpaid debt belonging to Applicant. Based on the limited documentation available, inferences warrant that this debt cannot be sufficiently identified with current information to attribute the debt to Applicant.

### **Endorsements**

Applicant is highly regarded by his colleagues and coworkers (see ex. C). Those who have worked with Applicant credit him with a high degree of professionalism, honesty, dedication to mission, and a personal moral code (see ex. C). He is highly respected in his Iraqi Christian community where he practices his faith (ex. C). His prior military task force commander in Iraq who worked with between May 2008 and May 2009 credited Applicant with playing a key mission role and being very reliable and trustworthy (Tr. 58-62). He would place his life in Applicant's hands if the occasion called for it (Tr. 75), and recommended Applicant for a position of trust (Tr. 72-73). Applicant is credited with excellent performance evaluations and has received awards and commendations crediting his superior translation contributions to his command (see exs. A and B).

### **Policies**

The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and all of the "[c]onditions that could mitigate security concerns," if any. These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or

denied. However, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following 2(a) factors: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

### **Financial Considerations**

*The Concern:* Failure or inability to live within one's means, satisfy debts and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts. AG, ¶ 18.

### **Foreign Influence**

*The Concern:* "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 the this Guideline can and should considered 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” See AG ¶ 6.

### **Burden of Proof**

By virtue of the principles and policies framed by the revised AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *Kungys v. United States*, 485 U.S. 759, 792-800 (1988). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his clearance eligibility. “[S]ecurity-clearance determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

### **Analysis**

Applicant is a respected arabic linguist of a defense contractor who accumulated delinquent debts during recurrent periods of unemployment and deployments. His financial history includes a discharged Chapter 7 bankruptcy and a dismissed Chapter 13 plan, both related to time off from his work due to accident-related disabilities.

Financial issues associated with his wife's election to vacate their home during one of Applicant's deployments and deteriorating real estate prices in his community impaired his ability to pay his mortgages and contributed to his defaulting on both of his mortgages and ultimately having his home non-judicial foreclosed by the first trust deed holder.

Once his property was foreclosed by the first trust deed holder, his second mortgagee (creditor 1.c) was deprived of any remaining security in the property and was left with only a right of action to pursue a deficiency against Applicant and his wife for the outstanding loan balance on its home equity loan (around \$103,000). This lender still holds deficiency rights under the state's non-judicial foreclosure procedures covered by the state's Code of Civil Procedure (CCP), § 580b. Because of Applicant's past problems with his finances and exposure to potential deficiency demands by the second trust deed holder, his finances become a subject of continuing trust concerns.

Trust concerns are also raised under the foreign influence guideline due to Applicant's longstanding family ties to Iraq. Although his contacts with family members residing in Iraq appear to be limited, they do involve family members with prior military ties to the Hussein government and a sister who still resides in Iraq.

### **Applicant's finances**

Applicant's pleading admissions of the debts covered in the SOR negate the need for any independent proof (*see McCormick on Evidence*, § 262 (3d ed. 1984)). Each of his listed debts are fully documented in his latest credit reports and provide ample independent proof of his debts. Applicant's accumulation of delinquent debts and his past inability to pay, or otherwise address these debts in a systematic fashion outside of accepting foreclosure and the loss of his home, warrant the application of two of the disqualifying conditions (DC) of the Guidelines: DC ¶ 19(a), "inability or unwillingness to satisfy debts," and DC ¶19(c)) "a history of not meeting financial obligations."

Having twice resorted to the protections afforded by the bankruptcy laws in the last 15 years to shelter him from collective creditor demands, and more recently to relinquishing his home to foreclosure and exposing himself to potential enforcement of a deficiency on an unsatisfied home equity loan, Applicant still remains at some risk to a potential deficiency action by the sold-out second trust deed holder. Despite his repeated contacts with this creditor, this creditor has not been able to identify any deficiency owed by Applicant to the creditor. Both Applicant and his attorney document their efforts to identify the debt and work out a repayment plan with creditor 1.c, Their efforts reflect good-faith efforts to work with the creditor, and are entitled to credit for trying.

Based on his evidentiary showing of his recurrent medically-related layoffs and deteriorating conditions in his region's real estate market that affected his ability to

complete a short sale in late 2006-early 2007, Applicant's proofs are sufficient to establish some extenuating circumstances associated with his bankruptcy petitions and home foreclosure. As a result, MC ¶ 20(b) of the financial considerations guideline, "the conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation, and the individual acted responsibly," has some application to Applicant's circumstances.

Applicant's good-faith efforts to contact the creditor holding potential deficiency rights and willingness to pay whatever is still due and owing on his home equity loan are well documented and entitle Applicant to invoke the mitigating benefits of MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," and MC ¶ 20(c), "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control."

Holding a security clearance involves a fiduciary relationship between the government and the clearance holder. Quite apart from any agreement the clearance holder may have signed with the Government, the nature of the clearance holder's duties and access to classified information necessarily imposes important duties of trust and candor on the clearance holder that are considerably higher than those typically imposed on government employees and contractors involved in other lines of government business. See *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980). And financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance.

But Applicant has clearly demonstrated his good-faith willingness to locate the creditor with potential deficiency rights on his home equity loan (creditor 1.c) and work with the creditor in repaying any owed deficiency balance. Both the mitigating conditions of the guideline for financial considerations and a whole-person assessment of Applicant enable Applicant to surmount the judgment questions raised by his accumulation of a large home equity loan in October 2005, and his inability to resolve the potential deficiency balance with creditor 1.c to date. His improving overall credit, his good-faith efforts to resolve his potential deficiency balance with creditor 1.c, and his substantial contributions to the military command he serves in Iraq combine to enable him to surmount security concerns over his still unresolved mortgage indebtedness.

Taking into account all of the documented facts and circumstances surrounding Applicant's financial history, his current credit worthiness, and his good-faith attempts to address a potentially large enforcement action by a creditor holding assigned rights on a foreclosure deficiency, it is safe to make predictive judgments about his ability to repay his debts and restore his finances to stable levels commensurate with the minimum requirements for holding a security clearance. Favorable conclusions warrant with respect to the allegations covered by Guideline F.

## **Foreign influence concerns**

The government urges security concerns over risks associated with Applicant's wife, siblings, and in-laws who are either Iraqi citizens residing in the U.S. without dual U.S. citizenship, or are still residing in Iraq (as is the case of Applicant's sister). Key to the government's foreign influence concerns are Applicant's immediate family members who have prior contacts with Iraqi government officials that predate U.S. enforcement measures in 2002.

Despite encouraging efforts in the development of strategic partnerships between Iraq and the U.S. in recent years, Iraq remains a country in the process of establishing a stable democratic government able to protect all of its disparate constituent groups and maintain peace with its neighbors. The historically close relationship between Applicant and his living family members (some who reside in the U.S. and some who reside in Iraq) makes them potentially vulnerable to coercion and non-coercive measures because of their close familial family ties with Applicant.

Because non-governmental entities operating in Iraq, as well as the former Iraqi military and intelligence authorities, have a history of violating Iraqi domestic laws and regulations, as well as international laws, they are more likely to use improper and/or illegal means to obtain classified information in Applicant's possession or control through his family members still residing in Iraq. DC ¶ 7(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," of the AGs for foreign influence.

To date, none of Applicant's siblings residing in the U.S. and Iraq have any history of being subjected to any coercion or influence. These historical antecedents do limit the severity of a conflict situation. However, the absence of any past coercive measures taken by Iraqi authorities does not completely absolve Applicant from coercive risks in the future given Iraq's checkered history of political instability, violence, hostage taking, and abusive measures taken against its own citizens. For these reasons, ¶ DC 7(b), "connection 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," has some limited application to Applicant's situation.

Still, the majority of Applicant's immediate family members have no identified prior military or government service. Only his father and oldest brother completed prior military service in the Iraqi army. Any potential conflict that might be associated with his parents, his immediate family members, and his wife's family is small and not likely to pose any conflicts of interest for Applicant in the foreseeable future.

Iraq today remains a very fragile state. Documented reports of human rights abuses continue to underscore a pervasive climate of violence and corruption that has hampered widespread efforts to improve and stabilize the country's political, economic, and social institutions. Despite setbacks of insurgent activity, however, the rebuilding of oil infrastructure and utilities infrastructure has continued to expand since 2004 with U.S. aid and support.

Public reports also cite the improving political environment in Iraq and look to the March 2010 elections as a major test of political and security progress in the country. As improve materialize in Iraq's geopolitical infrastructure, the risk of a pressure or influence situation involving an immediate or extended family member of Applicant's is reduced, commensurate with improved security and political conditions on the ground.

The AGs governing collateral clearances do not dictate *per se* results or mandate particular outcomes for applicants with relatives who are citizens/residents of foreign countries in general. What is considered to be an acceptable risk in one foreign country may not be in another. While foreign influence cases must by practical necessity be weighed on a case-by-case basis, guidelines are available for referencing in the supplied materials and country information about Iraq. The current AGs do take into account of the country's demonstrated relations with the U.S. as an important consideration in gauging whether the particular relatives with citizenship and residency elsewhere create a heightened security risk. The geopolitical aims and policies of the particular foreign regime involved do matter.

Based on his case-specific circumstances, MC ¶ 8(a), "the nature of the relationships with foreign persons, the country in which these persons are located, or the persons or activities of these 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 a foreign individual, group, organization, or government and the interests of the U.S.," is available to Applicant. Neither Applicant nor his immediate or extended family residing in Iraq pose heightened security risks that could subject them to potential pressures and influence from Iraqi government and military officials.

Of benefit to Applicant, too, is MC ¶ 8(b), "there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest." Applicant's loyalty, patriotism, and professional commitments to the U.S. is well demonstrated and enough under these circumstances to neutralize all potential conflicts that are implicit in his relationships with his immediate and extended family. MC ¶ 8(c), "contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create risk for foreign influence or exploitation," has some

applicability, too, based on Applicant's infrequent contacts with his sister and his wife's family.

To complete a whole person assessment of Applicant's foreign influence risks to ascertain whether they are fully compatible with minimum security clearance eligibility requirements, Applicant's substantial civilian contributions to U.S. security interests as an Arab linguist in Iraq require careful balancing with the raised security concerns. To his credit, Applicant has compiled impressive performance reviews, numerous certificates of appreciation of his valuable linguistic contributions to his command's Iraqi Freedom missions during his Iraqi deployments. Coworkers, colleagues, and friends describe him as honest and trustworthy and highly respected in his Christian community.

Whole person assessment is available also to minimize Applicant's exposure to conflicts of interests with his Iraqi family members. Most importantly, Applicant is not aware of any risks of coercion, pressure, or influence that any of his family members might be exposed to. So, in Applicant's case, the potential risk of coercion, pressure, or influence being brought to bear on him, or any of his respective family members (whether or not they reside in the U.S. or Iraq) is minimal and mitigated.

In reaching my decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in AG ¶ 2(a).

### **Formal Findings**

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions, and the factors and conditions listed above, I make the following separate formal findings with respect to Applicant's eligibility for a security clearance.

**GUIDELINE F (FINANCIAL):** **FOR APPLICANT**

Subpara. 1.a :	For Applicant
Subpara. 1.b:	For Applicant
Subpara. 1.c:	For Applicant
Subpara. 1.d:	For Applicant
Subpara. 1.e:	For Applicant
Subpara. 1.f:	For Applicant
Subpara. 1.g:	For Applicant

**GUIDELINE B (FOREIGN INFLUENCE):** **FOR APPLICANT**

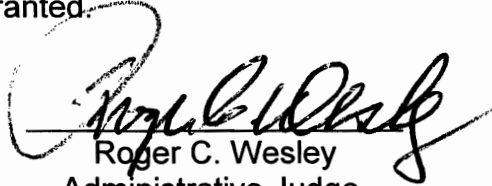
Subpara. 2.a :	For Applicant
Subpara. 2.b:	For Applicant
Subpara. 2.c:	For Applicant
Subpara. 2.d:	For Applicant

Subpara. 2.e:

For Applicant

**Conclusions**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant access to classified information. Clearance is granted.



Roger C. Wesley  
Administrative Judge