



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-06792
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: Alan V. Edmunds, Attorney At Law

January 25, 2010

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire For Investigations Processing on October 27, 2005. (Government Exhibit 1). On March 24, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B for Applicant. 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.

The Applicant responded to the SOR on May 12, 2009, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on July 8, 2009. A notice of hearing was issued on July 13, 2009, scheduling the hearing for August 19, 2009. At the hearing the Government presented four exhibits, referred to Government Exhibits 1 to 4. The Applicant called two witnesses and presented twenty-three exhibits, referred to as Applicant's Exhibits A through W. He also testified on his own behalf. The official transcript (Tr.) was received on August 26, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

REQUEST FOR ADMINISTRATIVE NOTICE

Department Counsel submitted a formal request that I take administrative notice of certain facts concerning the current political conditions in Iraq. After being assured that the only information to be considered in the documentation was that concerning the country of Iraq, Applicant had no objection. (Tr. p. 22). The request and the attached documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 43 years of age and has a Bachelor Of Science Degree in Architectural Engineering from a University in Iraq. He is employed as a Bi-cultural/Bilingual Advisor for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in Iraq in 1966. He grew up in Iraq, as a Kurd. He was drafted and served four months in the mandatory Iraqi military before leaving to save his life, and because he did not believe in the war. From 1994 to October 1996, he worked for an American based company in Iraq. In 1996, the government of Iraq attacked the city and the company the Applicant worked for. At that point, the Iraqi government considered the Applicant to be a spy for the United States. With the help of the United States company, the Applicant fled the country in 1996.

In 1997, the Applicant came to the United States with his wife and infant daughter, and made it their permanent home. He quickly merged into the American culture and society. He became a naturalized United States citizen in 2005. His wife, became a naturalized United States citizen in 2006, and they now have three children who are United States citizens, two of whom were born here.

The Applicant has a number of family members who remain in Iraq. His elderly mother is a citizen and resident of Iraq. He contacts her by telephone approximately once every three or four months to see how she is doing. He also has three brothers and three sisters who are residents and citizens of Iraq. He contacts his brothers about three times a year to ask about their families. Two of his brothers he has not seen since 1999 when he returned to Iraq for three weeks, following his father's death. The remaining brother he saw with permission, during an official mission in 2006. The Applicant contacts his sisters in Iraq about once a year. He last saw his sisters in Iraq in 1999. The only member of his family that works for the government is his middle sister. She works for a hospital in Iraq, as all hospitals are run by the government. None of his family have asked him any questions about his job in the United States.

The Applicant has a mother and father-in-law who are retired residents and citizens of Iraq. He has a sister and brother-in-law who are also residents and citizens of Iraq. He does not communicate with them at all, and last saw them in 1999. The Applicant fully understands that the interests of the United States come first, even if his family in Iraq were jeopardized. (Tr. p. 80).

In October 2005, the Applicant started working for his current employer. His job is based in Iraq on a United States military base. He reports on a daily basis to high ranking military officers and understands his important responsibilities to the United States. The Applicant has never been approached by anyone questioning his job or any situation or information adverse to the United States, or that would otherwise place the security of the United States in jeopardy. If he ever were approached in that manner, he states that he would immediately report it to his superiors. He currently owns two houses in the United States, a checking and savings account, and a 401(k) investment account.

The Applicant has no assets of any kind in Iraq. Applicant supports no political organizations and does not vote in Iraq. He states that he, his wife or children will never return to Iraq to live.

Two witnesses testified on behalf of the Applicant. One, a past coworker and friend, testified that he and his family regularly socialized with the Applicant and his family. The other, a past employer and friend, testified that he considers the Applicant to be a man of excellent character.

Numerous letters of recommendation from various high ranking military officers, and diplomats, with whom the Applicant has worked, or is currently working, reflect all very positive recommendations for security clearance. The Applicant is said to have the skills, perspective, intelligence and experience that have allowed him to successfully fulfill the requirements of a delicate job that necessitates an understanding of security concerns and the protection of sensitive information. Working under the highest threat of attack and espionage, the Applicant is trusted by these individuals to defend and protect the interests of the United States. He is considered a consistent good worker, able to deal effectively with multiple complex tasks often under significant time constraints and pressure. He pays appropriate attention to detail, and takes pride in the quality of his work. Each of the individuals who have submitted letters on the Applicant's behalf have full faith in the Applicant's trustworthiness, ethics, loyalty and commitment to the interests of the United States. (Applicant's Exhibits A through I).

Applicant's performance evaluations from April 2006 through January 2009 indicate that he consistently exceeds work requirements in every category. (Applicant's Exhibits J through O).

Applicant has received Certificates of Appreciation for outstanding work for the United States. (Applicant's Exhibits P, Q, U and V).

Applicant has completed specialized training courses in his field to assist the United States in its mission. (Applicant's Exhibits R and S).

I have taken official notice of the following facts concerning the Iraq. With regard to Iraq, in 2003, a United States led coalition removed Saddam Hussein and his Ba'athist regime from power. In March 2006, Iraq's new government took office after being freely elected by the Iraqi people. However, violence continues to engulf the country. This violence has been fueled and perpetrated by Al Qaida terrorists, Sunni insurgents, and Shiite militias and death squads. The State Department has specifically stated that: "The risk of terrorism directed against United States citizens and interests in Iraq remains extremely high". Furthermore, the State Department has posted the following warning: "Attacks against military and civilian targets through Iraq continue, including in the International (or "Green") Zone. Targets include hotels, restaurants, police stations, checkpoints, foreign diplomatic missions, and international organizations and other locations with expatriate personnel. Such attacks can occur at any time." Kidnapings still occur: the most recent kidnaping of an American citizen occurred in August 2007. There are United States substantiated reports of human rights abuses, including a "pervasive climate of violence; misappropriation of official authority by sectarian, criminal and insurgent groups; arbitrary deprivation of life; disappearances; torture and other cruel, inhuman or degrading treatment or punishment."

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Influence

6. *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 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.

Conditions that could raise a security concern:

7. (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact

creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

7. (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.

Conditions that could mitigate security concerns:

8. (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.;

8. (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

8. (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;

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

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent, and seriousness of the conduct;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The extent to which participation is voluntary;
- f. The presence or absence of rehabilitation and other permanent behavior changes;
- g. The motivation for the conduct;

- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is “clearly consistent with the national interest” to grant an Applicant’s request for access to classified information.

The DoD Directive states, “The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, “Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned.”

The Government must make out a case under Guideline B (foreign influence) that establishes doubt about a person’s judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant’s adverse conduct and her ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a susceptibility to foreign influence and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant’s credibility based on the

record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR.

Under Foreign Influence, Disqualifying Condition 7(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion and, 7(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 applies.

However, the Applicant has provided compelling evidence to show that the following Mitigating Conditions also apply to this particular case, given his particular background: *Mitigating Conditions 8(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., 8(b) There is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest, 8(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, and 8(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority also apply.*

Although the Applicant has foreign family members who are residents and citizens of Iraq, the Applicant is not close to them, and now has very little contact with them whatsoever. There is no evidence of a close bond or strong evidence of affection. The Applicant's deep and abiding ties are here in the United States. His immediate family reside in the United States. All of his financial assets are in the United States. He is an American citizen. For the past thirteen years he has worked hard to establish himself as a responsible, trustworthy, professional and loyal American citizen. His wife and children are all citizens and residents of the United States. His unique employment with the DOD, his assets, which include his homes, bank and retirement accounts are all in the United States. The Applicant has essentially cut all ties from Iraq when he moved to the United States and made it his permanent home for the past thirteen years.

His relationship with his family in Iraq, tenuous though it is, does create a heightened risk of foreign pressure or attempted exploitation because terrorists in the Middle East seek intelligence and are hostile to the United States' interests. Iraq is not safe places for anyone, that much is true. It is a war zone. However, there is substantial evidence that the Applicant behaved in a courageous and honorable way during his tour of duty in Iraq. Officers and diplomats from the military have submitted glowing written statements discussing the Applicant's activities in Iraq, his strong sense of integrity, and specifically his ability to safeguard classified information in a combat area.

Applicant established application of Mitigating Conditions 8(a), 8(b), 8(c), and 8(d). Based on his relationships and depth of loyalty to the United States, he can be expected to resolve any conflict of interest in favor of the United States interest. He has lived in the United States since 1978 until his employment with the Department of Defense in 2003. The Applicant has been a naturalized American citizens since 2005. His wife is a naturalized citizen and his children are native born Americans. He owns a two houses in the United States and has no financial interests of any kind in Iraq. He has limited contact with his family members living in Iraq, and there is no evidence that he has connections or contact with anyone over there other than his family members.

I have also considered the “whole person concept” in evaluating the Applicant’s eligibility for access to classified information. Under the particular facts of this case, the totality of the facts set forth above, when viewed under all of the guidelines as a whole, support a whole person assessment of good judgement, trustworthiness, reliability, candor, and a willingness to comply with rules and regulations, and/or other characteristics indicating that the person may properly safeguard classified information.

It is noted that the current political situation in Iraq elevates the cause for concern in this case. However, the evidence shows that the Applicant has no bond or affection with any foreign country, or to any foreign individual, or to any foreign Government, in any way that could potentially cause the Applicant to become subject to foreign exploitation, inducement, manipulation, pressure, or coercion against the interests of the United States. Therefore, there is no possibility of foreign influence that exists that could create the potential for conduct resulting in the compromise of classified information. I find that the Applicant is not vulnerable to foreign influence. Accordingly, I find for the Applicant under Guideline B (Foreign Influence).

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline B.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.
Subparas. 1.a.: For the Applicant
Subparas. 1.b.: For the Applicant
Subparas. 1.c.: For the Applicant
Subparas. 1.d.: For the Applicant
Subparas. 1.e.: For the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge