



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 08-07687
)	
Applicant for Security Clearance)	

Appearances

For Government: Jennifer Goldstein, Esquire, Department Counsel
For Applicant: Alan V. Edmunds, Esquire

July 6, 2009

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on January 5, 2006. On December 16, 2008, 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.

Applicant acknowledged receipt of the SOR on January 1, 2009. He answered the SOR in writing through counsel on January 30, 2009, and requested a hearing before an Administrative Judge. DOHA received the request on February 5, 2009, and the case was originally assigned to another Judge on April 27, 2009. It was reassigned to the undersigned on May 4, 2009. DOHA issued a notice of hearing on May 6, 2009,

and I convened the hearing as scheduled on May 27, 2009. The Government offered Exhibits (GXs) 1 through 3, which were received without objection. Applicant testified on his own behalf and submitted Exhibits (AppXs) A through H, without objection. DOHA received the transcript of the hearing (TR) on June 2, 2009. The record closed on May 27, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Syria and Iraq. The request was granted. The request, and the attached documents, were not admitted into evidence, but were included in the record. Applicant's counsel also asked that I take administrative notice of certain facts relating to the Middle East and additional facts relating to Iraq. The request was also granted. The requests, 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

In his Answer to the SOR, Applicant denied the allegations styled in the subparagraphs of the SOR, without explanations.

Guideline B - Foreign Influence

The Applicant was born in Bagdad, Iraq, but came to the U.S. in 1987 (TR at page 25 line 8 to page 27 line 19). He received an advanced degree from an American university, became a U.S. citizen, and is now employed by a government contractor in "support to all our troops and our Government in the effort in Iraq" (*Id*, and TR at page 51 lines 3~15). His direct supervisor, an U.S. Army Captain, gives the Applicant tops marks in all aspects of his job in Iraq (AppXs E~G). He works in Iraq on four month cycles, and then spends two weeks of leave with his family (AppXs A, B, and E~G). His primary residence is in the U.S., where he lives with his wife and four daughters (TR at page 46 line 6 to page 48 line 20). His wife is "an assistant teacher" (*Id*). His annual income is about \$200,000, and he has about \$130,000 in savings (TR at page 46 line 6 to page 48 line 20).

1.a.~1.c. and 1.f. The Applicant's mother is a citizen of Iraq, but resides in Syria with one of the Applicant's sisters (TR at page 31 line 19 to page 32 line 5). She is 81 years of age, and has "always [been] a housewife;" and as such, she has never worked for any foreign government (TR at page 55 lines 1~5, and at page 59 line 3~5). In the past, he would send his mother about \$200 each month (TR at page 31 line 23 to page 32 line 5, see *also* at page 28 line 20 to page 30 line 11). The Applicant ceased this practice "[a]bout seven months ago" (*Id*).

Applicant's sister is also a citizen of Iraq (TR at page 62 line 18 to page 64 line 14). She "is a housewife;" and as such, does not work for any foreign government (*Id*). Her husband is deceased (TR at page 62 line 18 to page 64 line 14). Both this sister and Applicant's mother have formally applied to immigrate to the U.S. (*Id*). Neither his mother nor his sister know that the Applicant works for the U.S. Government (TR at page 69 lines 15~20).

1.c. The Applicant has another sister who is a citizen of Iraq, but now resides in the United Arab Emirates (TR at page 59 line 21 to page 62 line 17). "She is a retired teacher" (*Id*). Her husband is also deceased (TR at page 59 line 21 to page 62 line 17). She has no affiliation with any foreign government (*Id*). This sister does not know that the Applicant works for the U.S. Government (TR at page 59 line 21 to page 62 line 17).

1.d. The Applicant's mother-in-law is a citizen and resident of Iraq (TR at page 69 line 21 to page 70 line 4). She is 74 years of age, and "a housewife" (*Id*). Her husband is deceased, and she, through Appellant's wife, has formally applied to immigrate to the U.S. (TR at page 71 lines 1~8).

1.e., 1.g. and 1.i. The Applicant's brother is a citizen of Iraq, but resides in the U.S. (TR at page 32 line 17 to page 33 line 11). He "owns a construction business" in the U.S. (TR at page 76 line 1 to page 77 line 17). At one time, this brother lived in Jordan, and the Applicant visited his brother and other family members in Jordan in 2004, 2005, 2006, and 2008 (TR at page 78 line 6 to page 85 line 10). The Applicant once owned property in Iraq, but sold this property to his brother for future consideration (TR at page 86 line 16 to page 88 line 11).

1.h. The Applicant had another brother who was a citizen and resident of Iraq, but he was killed by terrorists in about 2006 (TR at page 28 lines 5~14, and at page 35 lines 5~11).

The Applicant testified that he would not be subject to coercion by any foreign government vis-a-vis those of his relatives who do not live in the U.S. (TR at page 36 lines 8~13). Any such attempt at coercion would be reported to "U.S. authorities, and to . . . [his] company" (*Id*).

I also take administrative notice of the following facts. Since 1963, Syria has been ruled by an authoritarian regime. It is currently included on the State Department's list of states that sponsor terrorism. Due to Syria's active and passive support of terrorism, trade and commercial sanctions were implemented against Syria in 2004, 2006 and in 2008. In 2007, the State Department noted that its human rights record had worsened. Iraq, on the other hand, is a valuable partner with the U.S. in the war on terrorism, but violence continues to engulf the country. Furthermore, there continue to be reports of human rights abuses in Iraq.

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(c), 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must 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. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security 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 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 *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B - Foreign Influence

Paragraph 6 of the new adjudicative guidelines sets out the security concern relating to Foreign Influence: “Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign 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 a foreign interest.”

Here, AG ¶ 7(a) is applicable: “*contacts with a foreign family member . . . 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.*” The Applicant’s mother and one sibling live in Syria, and his mother in-law lives in Iraq. This is clearly countered, however, by the first mitigating condition, as “*the nature of the relationships with foreign persons, the country in which these persons are located . . . 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 . . . and the interests of the U.S.*” All of the Applicant’s surviving relatives noted in the SOR have either immigrated to the U.S., or have formally applied for immigration status.

AG ¶ 7(b) is also arguably applicable: “*connections to a foreign person . . . 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 . . . by providing information.*” This is clearly countered, however, by AG ¶ 8(b), as “*there is no conflict of interest, . . . because . . . the individual has such a deep and longstanding relationship 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.*” The Applicant has lived in the U.S. for more than 20 years. All of his wealth and possessions are here. Furthermore, his wife, children, and soon most of his family that are of concern to the Government, will reside in the U.S. I have no doubt as to his loyalties to the U.S.

Finally, the fourth mitigating condition is also applicable, as “*the foreign . . . activities are on U.S. Government business*” He works as a U.S. government contractor in support of the U.S.’s mission in Iraq. Furthermore, he can not be coerced by Syria or Iraq.

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) 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.

He has the unqualified support of the U.S. military, as evidenced by letters of support, and certificates of appreciation (AppXs A~D). A Deputy Commanding Officer of an Infantry Brigade stationed in Iraq avers, in part, the following:

[The Applicant] . . . is a man of great dedication and selfless sacrifice to America’s mission to assist their Iraqi allies. I fully endorse his request for a clearance to handle classified material (AppX B).

I have considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Overall, the record evidence leaves me without questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his alleged Foreign Influence.

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 F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.h:	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.

Richard A. Cefola
Administrative Judge