



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-10983
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gregg A. Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

May 17, 2010

**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated Foreign Influence security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On September 29, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, Foreign Influence. The action was taken under Executive Order (EO) 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 adjudicative guidelines (AG).

Applicant answered the SOR on October 29, 2009, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on January 28, 2010, and reassigned to me on February 25, 2010. DOHA issued a

notice of hearing on February 18, 2010, and the hearing was convened as scheduled on March 11, 2010. DOHA received the transcript of the hearing (Tr.) on March 19, 2010.

## **Evidentiary Rulings**

### **Request for Administrative Notice**

Department Counsel submitted a written request that I take administrative notice of certain facts about Iraq. He also requested that I take administrative notice of facts about an alternate system to traditional banking, sometimes referred to as the “hawala” system. Applicant did not object to either request, and they were approved. The request and the attached documents were not admitted into evidence but were included in the record as Hearing Exhibits (HE) I and II. The facts administratively noticed are set out in the Findings of Fact, below.

### **Evidence**

The Government offered Exhibits (GE) 1 through 8, which were received without objection. Applicant testified on his own behalf and submitted Exhibits (AE) A through H, which were admitted without objection. The record was held open for Applicant to submit additional information. Applicant submitted documents, which were marked AE I through K and admitted without objection. Department Counsel’s memorandum is marked HE III.

## **Findings of Fact**

Applicant is a 29-year-old employee of a defense contractor. He is applying for a security clearance. He was born in Iraq. He graduated from high school in Saudi Arabia. He attended high school in the United States but did not graduate. He is working on obtaining a General Educational Development (GED) high school equivalency certificate.<sup>1</sup>

Applicant’s father is in his 70s. He performed mandatory military service in the late 1950s and early 1960s. He was a member of the Ba’ath Party, as were other members of the military. Applicant was one of ten children, five sons (Applicant and brothers A, B, C, and D) and five daughters (E, F, G, H, and I). Three of Applicant’s brothers (A, B, and C) also performed mandatory military service and were members of the Ba’ath Party. His two oldest brothers (A and B) were killed by the Iraqi government. His oldest brother (A) was killed in about 1986, when he attempted to leave the army. His second oldest brother (B) was executed in about 1991, after he supported the Shi’a rebellion against the government of Saddam Hussein.<sup>2</sup>

Applicant’s father and brother (C) also supported the Shi’a rebellion. Applicant’s parents took Applicant, his younger brother (D), and three sisters (G, H, and I), and fled

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<sup>1</sup> Tr. a 31, 45-46; GE 1-5.

<sup>2</sup> Tr. at 13, 31-39, 96, 98-100; Applicant’s response to SOR; GE 1-5.

Iraq in 1991, after the Iraqi government crushed the Shi'a rebellion and killed thousands. With the assistance of the U.S. military, they made their way to Saudi Arabia, where they lived in a refugee camp. His older brother (C) escaped Iraq on his own and met the family in Saudi Arabia. His two oldest sisters (E and F) were married and remained in Iraq.<sup>3</sup>

Applicant's sister (G) married in Saudi Arabia. She immigrated to the United States in 1996. The rest of the family remained in Saudi Arabia in the refugee camp until 1997 when, with the exception of his older brother (C), they immigrated to the United States. Applicant was 16 years old when he came to the United States. He became a U.S. citizen in 2003. His mother and two of his sisters (G and H) also became U.S. citizens in 2004, 2005, and 2006. His father, youngest sister (I), and younger brother (D) are permanent residents (green card holders). Applicant's mother, three sisters, and brother all reside in the United States.<sup>4</sup>

Applicant's brother (D) is serving in the United States Marine Corps. Applicant's brother-in-law, H's husband, is a U.S. citizen currently working in Iraq as an analyst supporting the U.S. Government's mission.<sup>5</sup>

Applicant's brother (C) returned to Iraq from Saudi Arabia. He is married. He and his wife are Iraqi citizens and residents. He is a cashier and stocker at a local store. He has no association with the Iraqi government.<sup>6</sup>

Applicant's two oldest sisters (E and F) were married and remained in Iraq when the family fled Iraq. They are currently Iraqi citizens and residents. They are housewives with no association with the Iraqi government. Applicant's brother-in-law, E's husband, performed mandatory military service and was a member of the Ba'ath Party. Applicant is not close to his two brothers-in-law in Iraq.<sup>7</sup>

Applicant's father returned to Iraq for a visit in 2006. While he was in Iraq, his permanent residence card expired. He has been unable to renew it and has remained in Iraq. He is not employed and has no association with the Iraqi government.<sup>8</sup>

Applicant has two cousins who are Iraqi citizens and residents. The cousins served in the Iraqi military and were members of the Ba'ath Party. One cousin currently serves on the Iraqi Police Force.<sup>9</sup>

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<sup>3</sup> Tr. at 12, 31-44; Applicant's response to SOR; GE 1-5.

<sup>4</sup> Tr. at 31-45, 93, 101-102, 105, 120-121; Applicant's response to SOR; GE 1-5.

<sup>5</sup> Tr. at 13-14, 28, 97-98, 103; Applicant's response to SOR; GE 2; AE E-H.

<sup>6</sup> Tr. at 100-101; Applicant's response to SOR; GE 1-5.

<sup>7</sup> Tr. at 102-106; Applicant's response to SOR; GE 1-5.

<sup>8</sup> Tr. at 93-97, 121; Applicant's response to SOR; GE 2.

Applicant visited Iraq in 2005, 2007, and 2008. He traveled on his U.S. passport on each trip. In 2005, he was in Iraq for about three months and stayed with his brother (C) and his sisters (E and F). Applicant and his “wife” were married in a religious ceremony in Iraq in 2007. Their marriage was never formally certified by the Iraqi or any other government. Applicant believes he is married, and they treat each other as husband and wife, but because the marriage was not certified, he sometimes refers to her as his fiancée. She is an Iraqi citizen and is currently in Iraq. Applicant is in the process of sponsoring her to immigrate to the United States. She attends school to learn English. She has no association with the Iraqi government.<sup>10</sup>

Applicant has sent about \$4,000 to his family in Iraq since about 1999. He sent about \$2,000 by traditional means. He sent about another \$2,000 using an alternate system to traditional banking, sometimes referred to as the “hawala” system. The hawala system is discussed below.<sup>11</sup>

Applicant does not own any foreign assets. He owns a rental property in the United States. He estimated the value of his U.S. assets at \$120,000. He has voted in U.S. elections.<sup>12</sup>

Applicant is a valued and trusted employee. Several supervisors and military personnel sent letters on his behalf attesting to his patriotism and loyalty to this country. He is praised for his trustworthiness, professionalism, dedication, honesty, and integrity. He has volunteered his time by giving speeches to help local schools and the community. The character references recommend him for a security clearance.<sup>13</sup>

## **Iraq**

The Iran-Iraq war (1980-88) devastated the economy of Iraq. Iraq declared victory in 1988 but actually achieved a weary return to the status quo antebellum. The war left Iraq with the largest military establishment in the Gulf region but with huge debts and an ongoing rebellion by Kurdish elements in the northern mountains. The government suppressed the rebellion by using chemical and biological weapons on civilian targets, including a mass chemical weapons attack on the Kurdish city of Halabja that killed several thousand civilians.

Iraq invaded Kuwait in August 1990, but a U.S.-led coalition acting under United Nations (UN) resolutions expelled Iraq in February 1991. After the war, Kurds in the north and Shi'a Muslims in the south rebelled against the government of Saddam Hussein. The government responded quickly and with crushing force, killing thousands,

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<sup>9</sup> Tr. at 13, 113; Applicant’s response to SOR; GE 2.

<sup>10</sup> Tr. at 79-93, 112-113; Applicant’s response to SOR; GE 1-5.

<sup>11</sup> Tr. at 113-120; Applicant’s response to SOR; GE 2.

<sup>12</sup> Tr. at 117-118, 121-123.

<sup>13</sup> AE A-D, J, K.

and pursued damaging environmental and agricultural policies meant to drain the marshes of the south.

In 2003, the United States led a coalition to remove Saddam Hussein from power in Iraq. Following the swift invasion and successful removal of Hussein's government from power, the United States endeavored to set a solid foundation of democratic institutions in Iraq. The Constitution in Iraq was ratified on October 15, 2005. After free elections in 2005, Iraq's new government, a parliamentary democracy, took office in March 2006.

In 2007, 92% of Iraq's exports were in crude oil and crude oil materials. Almost half of Iraq's exports went to the United States. The United States' ultimate goal in Iraq is to establish a peaceful, united, stable, democratic, and secure nation that will be an ally of the United States in the war against terrorism. The United States has invested thousands of lives and billions of dollars to assist in the reconstruction of Iraq. Success in Iraq is a high national priority of the United States.

Despite the elections and new government, Baghdad, Mosul, and several other areas have especially serious problems with violent terrorists and insurgents. Although there have been recent improvements in the security environment, Iraq remains dangerous, volatile, and unpredictable. Some areas of Iraq are more peaceful and less susceptible to terrorist attacks than others; however, all areas of the country are still very dangerous. Terrorists have the ability to strike most areas of the country with explosive devices and mines. Numerous attacks and kidnappings have targeted the U.S. Armed Forces, contractors, and other civilians, as well as Iraqis. Even with aggressive governmental action against terrorists by U.S. and Iraqi forces, the threat of terrorism in Iraq remains very high. Terrorist groups can conduct intelligence activities as effectively as state intelligence services.

Human rights concerns include a climate of violence; misappropriation of official authority by sectarian, criminal, and extremist groups; arbitrary deprivation of life; disappearances; torture and other cruel, inhuman, or degrading treatment or punishment; impunity; poor conditions in pretrial detention and prison facilities; denial of fair public trials; delays in resolving property restitution claims; immature judicial institutions lacking capacity; arbitrary arrest and detention; arbitrary interference with privacy and home; other abuses in internal conflicts; limitations on freedoms of speech, press, assembly, and association due to sectarianism and extremist threats and violence; restrictions on religious freedom; restrictions on freedom of movement; large numbers of internally displaced persons (IDPs) and refugees; lack of protection of refugees and stateless persons; lack of transparency and widespread, severe corruption at all levels of government; constraints on international organizations and nongovernmental organizations' (NGOs) investigations of alleged violations of human rights; discrimination against and societal abuses of women and ethnic and religious minorities; human trafficking; societal discrimination and violence against individuals based on sexual orientation; and limited exercise of labor rights.

## **Hawala**

Hawala is an alternative or parallel remittance system. It exists and operates outside of, or parallel to, “traditional” banking or financial channels. It was developed in India, before the introduction of western banking practices, and is currently a major remittance system used around the world. It is but one of several such systems used around the world. These systems are often referred to as “underground banking”; this term is not always correct, as they often operate in the open with complete legitimacy, and these services are often heavily and effectively advertised.

The components of hawala that distinguish it from other remittance systems are trust and the extensive use of connections such as family relationships or regional affiliations. Unlike traditional banking, hawala makes minimal (often no) use of any sort of negotiable instrument. Transfers of money take place based on communications between members of a network of hawaladars, or hawala dealers.

Hawala is used around the world to conduct legitimate remittances. Like any other remittance system, hawala can, and does, play a role in money laundering.

## **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense 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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable 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 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 EO 10865 provides that adverse 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B, Foreign Influence**

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 7:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Two are potentially applicable in this case:

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; 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.

Applicant's wife/fiancée, brother, and two sisters are citizens and residents of Iraq. His father is an Iraqi citizen. His father was granted permanent residence in the United States, but he has been in Iraq since 2006. The presence of Applicant's immediate family members in Iraq creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. It also creates a potential conflict of interest. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

Applicant's siblings in Iraq are married to Iraqi citizens. Applicant also has cousins that are Iraqi citizens and residents. Those extended family members do not create a potential conflict of interest or a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. SOR ¶¶ 1.g, 1.h, 1.i, 1.k, and 1.l are concluded for Applicant.

There are no security concerns or disqualifying conditions raised by Applicant's siblings who are Iraqi citizens and permanent residents of the United States. SOR ¶¶ 1.e and 1.f are concluded for Applicant.

Applicant traveled to Iraq in 2005, 2007, and 2008 to visit family members. That has no independent security significance.<sup>14</sup> SOR ¶ 1.n is concluded for Applicant.

Applicant sent money to his family in Iraq. He sent about \$2,000 through traditional means and about \$2,000 through an alternative remittance system sometimes referred to as hawala. There is no evidence that Applicant intended to launder any money in the transactions. There are no independent Foreign Influence security concerns raised by the transactions. SOR ¶ 1.m is concluded for Applicant.

Conditions that could mitigate Foreign Influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(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

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<sup>14</sup> See ISCR Case No. 02-26978 (App. Bd. Sep. 21, 2005).



(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.

Applicant has been in the United States since 1997, and he has been a U.S. citizen since 2003. He has family members who performed mandatory military service in Iraq. That does not mean they supported the Saddam Hussein regime. Two of his brothers paid for their dissidence with their lives. Most of his family had to flee Iraq and lived in a refugee camp in Saudi Arabia until they immigrated to the United States. His brother is showing his patriotism by serving in the Marine Corps. Applicant desires to serve this country in another capacity. Applicant is clearly a loyal U.S. citizen. However, he has close family ties to Iraq, a country with continuing human rights concerns and that is subject to widespread violence by various terrorist, insurgent, and criminal elements. I am unable to find any of the mitigating conditions to be fully applicable to the security concerns related to his immediate family in 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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's favorable character evidence. I also considered the totality of Applicant's family ties to Iraq. Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or

country has interests inimical to those of the United States.”<sup>15</sup> The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation’s government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. Also very important is whether the foreign country is associated with a risk of terrorism.

Iraq has human rights issues, and it has been victimized by terrorism. The complicated state of affairs in Iraq places a significant burden of persuasion on Applicant to demonstrate that his immediate family members in Iraq do not pose a security risk. Applicant is a loyal U.S. citizen who is only seeking to aid this country. However, he was unable to mitigate the considerable security concerns raised by his family in Iraq.

Overall, the record evidence leaves me with questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Foreign Influence security concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a-1.d:	Against Applicant
Subparagraphs 1.e-1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Subparagraphs 1.k-1.n:	For Applicant

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<sup>15</sup> ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge