



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



In the matter of: )  
)  
) ISCR Case No. 08-11255  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Braden Murphy, Esquire, Department Counsel  
For Applicant: *Pro Se*

September 28, 2009

**Decision**

DAM, Shari, Administrative Judge:

Based upon a review of the record as a whole, eligibility for access to classified information is granted.

**History of Case**

On October 5, 2007, Applicant submitted a Questionnaire for Sensitive Positions, (SF 86). On April 30, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, Foreign Influence. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised Adjudicative Guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on May 20, 2009, and requested a hearing before an administrative judge. DOHA assigned the case to me on July 21, 2009, and issued a Notice of Hearing on July 29, 2009. I convened the hearing as scheduled on August 19, 2009. The Government offered Exhibits (GE) 1 through 3 into evidence, which were admitted without objection. Applicant testified and offered Exhibit (AE) 1 (consisting of 47 pages) into evidence. I admitted Applicant's exhibit without objection. DOHA received the transcript of the hearing (Tr.) on August 27, 2009.

## **Procedural and Evidentiary Rulings**

### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Iraq. (Tr. 18-19) The request and the attached documents are included in the record as Government Hearing Exhibits (HE) I through VI. Applicant did not object to my consideration of those Exhibits. The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

In his Answer to the SOR, dated May 20, 2009, Applicant admitted the factual allegations contained in ¶¶ 1.a through 1.f of the SOR.

Applicant is 41 years old. He was born in a northern part of Iraq, commonly referred to as the Kurdish area. He attended high school and undergraduate college there, receiving a bachelor's degree in Kurdish languages in 1990. He speaks English, Farsi, and Arabic. From 1991 to 1994, he worked for a Kurdish reconstruction company. From 1994 to 1996, he worked for a Swedish company doing business in the Kurdish area. At some point, Saddam Hussein decided that any citizen who worked for a foreign company should be executed. (GE 2 at 5)

In December 1996, Applicant, his wife, and their two children sought asylum in the United States. Applicant and his family stayed in Guam until April 1997, when they entered the United States through an affiliation with a religious social services organization. (GE 2 at 5) In December 2004, he became a naturalized U.S. citizen. His wife became a naturalized U. S. citizen in February 2004, and his two children became U.S. citizens in June 2005. Another child was born in the United States in 2001. His wife and children live with him in the United States. His wife obtained an advanced degree from a U.S. university where she works. (Tr. 45)

Both of Applicant's parents were born in Iraq. His father is 68 years old and a retired farmer. He receives a pension from the Iraqi government. His mother is 67 years old and a homemaker. They are citizens and residents of the Kurdish area in Iraq. Applicant filed a U.S. Immigration Petition for Relative for his mother and father in November 2005. (AE 1 at 34, 35)

Applicant is one of eight children, all born in Iraq. One of his siblings is deceased. One of his brothers is a U.S. permanent resident alien, residing in the United States. Another brother is residing in Denmark while awaiting citizenship there. His third brother is a resident and citizen of northern Iraq. He is a school principal for a public school. In September 2006, Applicant filed a U.S. Immigration Petition for Relative on his behalf and hopes that he will be able to come to the United States. (AE 1 at 36) His fourth brother is also a resident and citizen of northern Iraq. He is a lawyer and worked with the U.S. Army as a local interpreter from 2003 to 2004. (Tr. 79) In November 2005, Applicant filed a U.S. Immigration Petition for Relative on behalf of this brother. (AE 1 at 34) His two sisters are residents and citizens of a city in northern Iraq. They are homemakers and their husbands work for a company that removes mines placed in the ground during the Iran/Iraq war. (Tr. 67) None of these relatives works directly for the Iraqi government. (Tr. 42-45) Applicant speaks to his parents a couple times a month. He emails his siblings once or twice a month and sometimes calls them. (Tr. 62)

Applicant's mother-in-law and father-in-law are residents and citizens of Iraq. His mother-in-law is a homemaker, and his father-in-law is retired from a city worker position. (Tr. 44) He has some type of pension from the city. (Tr. 71) His wife's two brothers are residents and citizens of Iraq. (Tr. 45) One of her brothers works for a U.S. bank and the other brother is a policeman. (Tr. 46) His sister-in-law is a naturalized U.S. citizen. (Tr. 54) His wife contacts her family once or twice a month. (Tr. 63) Applicant has more limited contact with his in-laws. (GE 2 at 8) None of Applicant's immediate family members or in-laws has been approached or threatened by the Iraqi government or any terrorist organization. (Tr. 80) These in-laws reside in the Kurdish section of Iraq. Applicant does not have contact with anyone living in Iraq other than family members. (GE 2 at 8)

After arriving in the United States, Applicant worked for a pizza parlor before securing a position as a health information analyst with a university hospital. He worked for the hospital for ten years, during which time he had access to confidential information. (Tr. 29) In October 2007, he applied for a position with a federal contractor as an Iraqi cultural advisor. In December 2007, he deployed with the U.S. Army to Iraq for 15 months. (Tr. 30-31) While there, he found himself in dangerous situations while traveling the countryside to gather information. He said at times he closed his eyes and "wasn't sure I can open my eyes again." (Tr. 35) Prior to going to Iraq, he received an interim Secret security clearance. In describing the reason he decided to work with the Army, he stated that he wanted to help the United States because this country gave him "new life." (Tr. 31)

Applicant returned to Iraq to visit his family in March 2001 and September 2005. (Tr. 47) He did not visit his family while he was there with the U.S. Army, as mandated by his employer. (GE 2 at 7; Tr. 48) He was permitted to phone them. (Tr. 48) His family knew that he was working for the United States, but had little information about his position. (Tr. 50)

Applicant owns a house in the United States. He also has U. S. bank accounts. (Tr. 46) He does not own any property in Iraq. (*Id.*) There is no derogatory information concerning his police or financial records. He has never been fired from a job. He has never been arrested. He has never used illegal drugs or been involved in an alcohol-related incident. (GE 1)

Applicant submitted several exhibits attesting to his capabilities and contributions to the U.S. Armed Forces' efforts in the war on terror. According to his performance evaluations for the time period of January 2008 to June 2008, Applicant's job performance was outstanding, exceeding expectations. (AE 1 at 14-19) One of his supervisors stated that Applicant's "cultural and political awareness throughout the various levels of the human terrain that exists has proven essential to the accomplishment of client mission requirements."(AE 1 at 15) In May 2008, a U. S. Army colonel wrote that Applicant's services with the Task Force "led to the mission success of the 3d Infantry Division's mission and strong relationships between the Soldiers, the Iraqi citizens, and leaders." (AE 1 at 10) The operations manager for Applicant's division wrote a strong letter of recommendation in October 2008. He stated that Applicant "is an exemplary team player and displays leadership potential. Not only is he quite capable of handling a high volume of work and producing quality deliverables, [Applicant] also has high moral character and is loyal." (AE 1 at 8) He submitted several certificates of appreciation for his service. (AE 1 at 6, 7) There is no evidence in the record that Applicant breached any security policies or procedures while holding a security clearance in Iraq.

Applicant credibly and sincerely asserted his pride in his U.S. citizenship at the hearing and his desire to resume work with the U.S. Army or obtain a position with the U.S. State Department. (Tr. 36)

I take administrative notice of the following facts: In 2003, The United States led a coalition to remove Saddam Hussein from power in Iraq. After free elections, Iraq's new government took office. Despite the elections and new government, Iraq remains engulfed in violence, perpetrated by Al Qaeda terrorists and other insurgents. Numerous attacks and kidnappings have targeted the U.S. Armed Forces, contractors, and other civilians, as well as Iraqis. Even with aggressive governmental action against terrorists, the threat of terrorism in Iraq remains high. Terrorist groups conduct intelligence activities as effectively as state intelligence services. (HE I, V, VI)

I also take administrative notice of the fact that the northern area of Iraq, occupied by the Kurdish people, has had a functioning democratic form of government for approximately ten years. It is more stable, appreciative of the support of the United States, and more friendly to the presence of the United States forces than other parts of Iraq. (HE I, III)

## 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(b) and 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 the 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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions 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 ¶ 6:

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

AG ¶ 7 describes nine conditions that could raise a security concern, two of which may be disqualifying 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;<sup>1</sup> 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.

In this case, Applicant has contact with his parents, four siblings, and in-laws, who are residents and citizens of Iraq. He has sufficient familial connection to them that he has filed immigration petitions to help four of them immigrate to the United States. His relationship and contact with these family members potentially create a heightened risk of foreign pressure or attempted exploitation because terrorists in the Middle East seek intelligence and are hostile to U. S. interests.

The Government produced substantial evidence of these two disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove

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<sup>1</sup> The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

mitigation. Three Foreign Influence mitigating conditions under AG ¶ 8 are potentially applicable to the disqualifying conditions based on the facts:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

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

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Applicant's father and father-in-law are retired and receive pensions from the Iraqi government. One of his brothers works for a public school and a brother-in-law is a policeman. These facts could place them in positions in which they want to acquire protected information and place Applicant in a position of having to choose between them and U.S. interests. However, because those family members reside in the Kurdish area of Iraq, known to be more democratic and less hostile to the United States, the potential for a conflict of interest arising is somewhat diminished. AG ¶ 8(a) has limited application.

Applicant established the application of AG ¶ 8(b). Based on his relationship and depth of loyalty to the U.S., he can be expected to resolve any conflict of interest in favor of the U.S. interest. He and his immediate family members have lived in the United States since April 1997. One of his children was born in the United States, and one of his brothers is a naturalized U.S. citizen residing here. He owns property and holds bank accounts in the United States. He worked for a major university for ten years before starting a job with a federal contractor. His wife earned an advanced degree from a U.S. university and has a position with the university. In contrast, his Iraqi interests have become minimal over the years. He does not own property in Iraq. There is no evidence that he has connections or contact with any people other than his family members, some of whom hope to immigrate to the United States soon. He expressed a strong sense of loyalty to the United States.

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

## 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. The Appeal Board requires the whole person analysis address "evidence of an applicant's personal loyalties; the nature and extent of an applicant's family's ties to the U.S. relative to his [or her] ties to a foreign country; his or her social ties within the U.S.; and many others raised by the facts of a given case." ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Although this case pertains to Guideline B, and security concerns do not arise from any questionable conduct by Applicant, several circumstances warrant further analysis. First, there is a significant risk of terrorism and various human rights abuses in Iraq. More importantly for security purposes, terrorists are hostile to the United States and actively seek classified information. Terrorists, and even friendly governments, could attempt to use Applicant's parents, siblings and in-laws to obtain such information. Second, he had numerous connections to Iraq before he immigrated to the United States in 1997. Following his birth, he spent his formative years there. He was educated at an Iraqi university. He returned to visit his family in 2001 and 2005. Third, his parents, four siblings, and in-laws remain residents and citizens of Iraq. Fourth, he has consistent contact with these family members.

Substantial mitigating evidence weighs in favor of granting Applicant a security clearance. He is a mature person, who has lived in the United States for 12 years, and has been a naturalized citizen for five years. His spouse has been living in the United States since 1997 and is a naturalized citizen, as are two of his Iraqi-born children. One of his children was born here. Out of his sense of patriotism and love for the United States, he joined a company providing direct support to the U.S. Army, as a cultural advisor. One of his brothers, residing in Iraq, has worked for the U.S. Army. He has filed



immigration petitions for four family members. All of his family members residing in Iraq live in the Kurdish area, known to be more sympathetic to the United States. His ties to the United States, which he refers to as having given him “new life,” are much stronger than his ties to his family members living in northern Iraq. There is no evidence that he has ever taken any action that could cause potential harm to the United States. He takes his loyalty to the United States seriously, and he has worked diligently for a defense contractor for several years in an important capacity for the U.S. Army. In fact, he jeopardized his physical safety while working in Iraq. His supervisors assess him as loyal, trustworthy, conscientious, and responsible, giving him excellent evaluations and praising his dedication to the cause of freedom in Iraq. He is an excellent family member, employee and U.S. citizen. When he returned to Iraq in 2005 with the U.S. Army, he did not have any physical contact with his family, as mandated by his employer. No witnesses recommended denial of his security clearance. There is not any derogatory information about him in the record.

Applicant held an interim security clearance during his tenure with the U.S. Army without any indication that he breached security policies or procedures. While that fact is not normally to be considered a factor in granting a clearance, the Appeal Board noted in ISCR Case No. 05-03846 (App. Bd. Nov.14, 2006), *citing* ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006) as follows:

As a general rule, Judges are not required to assign an applicant’s prior history of complying with security procedures and regulations significant probative value for purposes of refuting, mitigating, or extenuating the security concerns raised by the applicant’s more immediate disqualifying conduct or circumstances. *See, e.g.,* ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No. 02-10113 at 5 (App. Bd. Mar. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd. May 30, 2006). However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the national security. *See, e.g.* ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006). The presence of such circumstances can give credibility to an applicant’s assertion that he can be relied upon to recognize, resist, and report a foreign power’s attempts at coercion or exploitation.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole person, I conclude Applicant has mitigated the security concerns pertaining to foreign influence.<sup>2</sup> Overall, the record evidence leaves me without questions or doubts as to Applicant’s eligibility and suitability for a

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<sup>2</sup> I conclude that the whole person analysis weighs heavily toward approval of his security clearance. Assuming a higher authority reviewing this decision determines the mitigating conditions articulated under AG ¶8 do not apply and severs any consideration of them, I conclude the whole person analysis standing alone is sufficient to support approval of a security clearance in this case.

security clearance. For all these reasons, I conclude Applicant 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:                      FOR APPLICANT

Subparagraphs 1.a through 1.f:      For Applicant

### **Conclusion**

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

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SHARI DAM  
Administrative Judge