



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



In the matter of: ----- SSN: ----- Applicant for Security Clearance)))))))	ISCR Case No. 08-11748
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Appearances

For Government: Paul DeLaney, Esquire, Department Counsel
For Applicant: Paul T. Krispin, Esquire

October 8, 2009

Decision

HOWE, Philip S., Administrative Judge:

On January 29, 2008, Applicant¹ submitted his Security Clearance Application (SF 86). On April 17, 2009, the Defense Office of Hearings and Appeals (DOHA) issued 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, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on May 26, 2009, and I received the case assignment on May 27, 2009. DOHA issued a Notice of Hearing

¹ The SOR spelling of Applicant's name is incorrect. Applicant corrected it on the record, and his SF 86 contains the correct spelling, which is used in the caption of this Decision.

on June 5, 2009, and I convened the hearing as scheduled on June 23, 2009. The Government offered Exhibits 1 through 3, which were received without objection. Applicant testified and submitted Exhibits A through C. Department Counsel did not object to Exhibits A and B, but did object to Exhibit C because it was not translated into English. I granted Applicant additional time to obtain a certified translation, which he did on July 2, 2009. Department Counsel argued in his transmittal memorandum that little or no weight should be given to Exhibit C as translated because of enumerated discrepancies as set forth in the memorandum. I admitted the exhibit into evidence. DOHA received the transcript of the hearing (Tr.) on July 6, 2009. The record closed on July 9, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

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. 14, 15) The request and the attached documents were admitted into evidence and were included in the record as Hearing Exhibit 4. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 1.c, 1.d, 1.e, and 1.g of the SOR, with explanations. He denied the factual allegations in ¶¶ 1.b and 1.f of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 49 years old, married, and has two children born in the United States. He owns a home in the United States, and a gas station with a partner. Applicant was born in Iraq, and came to the United States in May 1997 with his wife. He became a U.S. citizen in August 2006. He thinks his former Iraqi citizenship was renounced when he obtained U.S. citizenship. Applicant's wife was born in Iraq. She is not a U.S. citizen, but is a resident alien and citizen of Iraq. Her parents and siblings are U.S. residents. Her father is a U.S. citizen, but her mother is not a citizen. (Tr. 17-19, 25, 39, 45, 93-95; Exhibits 1-3)

Applicant's parents are citizens and residents of Iraq. His mother is a retired teacher and receives an Iraqi government pension. His mother had cancer a few years ago when Applicant was working for a government contractor in Iraq. When he called her once or twice a week to inquire about her health, he told his mother he was calling from California. He spoke with his father at the same time. Two of Applicant's sisters also live in his parent's house in Iraq. He spoke with them at the same time. Applicant spoke with his parents a few days prior to this hearing. At the present time, he speaks with his parents on his mother's cell phone about once a month. Applicant describes his relationship with his mother as "very good." (Tr. 27-31, 46-52; Exhibits 1-3)

Applicant has one brother living in Iraq. A second brother died in 2008, but Applicant did not attend his funeral in Iraq because of the restrictions on his job with the government contractor. His deceased brother was a police officer in Iraq. His living brother is older than Applicant, and is a citizen of Iraq. He drives a taxicab for a living, and has a wife and child. Applicant last saw his brother in 2007. Applicant speaks with his brother frequently and has a "good relationship" with him. (Tr. 53-60; Exhibits 1-3)

Applicant has two sisters who are citizens and residents of Iraq. He telephoned them the week before the hearing, and speaks with them monthly. The older sister lives with his parents and is not employed. Applicant describes his relationship with this sister as "very close." Applicant has a younger sister who is married to a man who owns a bakery. This sibling relationship is also close. (Tr. 61-66; Exhibits 1-3)

Applicant has about 15 aunts and seven uncles in Iraq. He also has many cousins living in Iraq. Applicant has a very good relationship with all these family members in Iraq. Applicant describes it as a close knit family. (Tr. 66-68, 88; Exhibits 1-3)

Even though the SF 86 states Applicant bought a house in Iraq during 2002, he admitted at the hearing the actual purchase was made in 2004 through a local Iraq attorney. Applicant used \$38,000 obtained from the sale of his wife's gold jewelry and other gold objects. He allowed his parents to live there for free from 2004 to 2006. Then he permitted a poor family to live in his house without rent payments from 2006 to 2008. Applicant transferred ownership of the house to his wife in March 2009 after some friends told him to sell or transfer the house if he wanted to be hired by a government contractor and obtain a security clearance. Applicant declared in March 2009 on his interrogatories that he owned the Iraqi house and its value was about \$50,000. The translation of the deed, or "temporary processing form," as it is labeled in the document submitted by Applicant, contains several illegible entries, and lists three persons who are to receive shares in the house. It is unclear from the document who owns the house, particularly because Applicant's name does not appear on the translated document. I do not give this exhibit or its translation any weight. Applicant intends to return to Iraq someday in the future and live in that house. Applicant will reclaim Iraqi citizenship when he returns to Iraq to live. (Tr. 32, 33, 37, 68-86, 91; Exhibits 1, C)

Applicant travelled to Iraq in 2001 with his wife. He travelled there in 2007 alone. He visited his aunts and uncles on that later visit, in addition to other relatives. Applicant stayed about 45 days on each visit. He resided with his parents on each trip. (Tr. 83-88; Exhibits 1-3)

Applicant submitted a statement from his supervisor about his employment since 2008, which was described as exemplary. She characterized Applicant as a reliable and trustworthy employee. Applicant submitted another person's statement about his expertise in translations which aided the efforts the company was making in Iraq. Applicant worked there from July to October 2008. Applicant also submitted a certificate

of achievement for his efforts from November 2008 to January 2009 from a military officer involved in certain activities in Iraq. (Tr. 20; Exhibits A and B)

I take administrative notice of the following facts. Iraq is a Middle Eastern country with 27 million people. In 2003, the United States led a United Nations coalition to remove Saddam Hussein, a long-serving dictator, from power in Iraq. A parliamentary democracy was created pursuant to a new 2005 constitution. After free elections in 2006, Iraq's new government took office. The Parliament was elected for a four-year term. Despite the elections and new government, Iraq had much violence, perpetrated by Al Qaeda terrorists and other insurgents. Numerous attacks and kidnappings targeted the U.S. Armed Forces, contractors, and other civilians, as well as Iraqis. Although the new governmental has taken aggressive action against terrorists, the threat of terrorism in Iraq remains high, as do human rights abuses. Terrorist groups conduct intelligence activities as effectively as state intelligence services. For the past 18 months, the large increase in U.S. combat troops in Iraq has substantially reduced violence. These troops were aided by Iraqi soldiers and Sunni local forces that formerly supported the Al Qaeda insurrection. In Northern Iraq, the Kurdish local government forces maintain a more peaceful environment for the residents than elsewhere in Iraq. (Exhibit 4)

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(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, an "applicant is

responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

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 and may be disqualifying. The following four disqualifying conditions are applicable to 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;

(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;

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion; and

(e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Applicant's wife and parents are citizens of Iraq. His three siblings, fifteen aunts, seven uncles, and numerous cousins live in Iraq and are citizens of that country. Applicant has at least monthly telephone contact with his parents, siblings, and other relatives. Applicant described his relationships with his family members as close and very good. He owns real estate in Iraq valued at \$50,000. All of these connections create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion, particularly because of Applicant's stated intention to return to Iraq in the future and live in the house he purchased in 2004 with his wife's gold.

AG ¶ 8 provides six conditions that could mitigate security concerns. Two mitigating conditions may be 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.; and

(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.

Applicant's relationship with his family living in Iraq is close. Terrorism remains a concern there as the country rebuilds after the Hussein era and the past six years of instability. Applicant's sister is a business owner, and he owns real estate in Iraq. With these connections, Applicant could be placed in a position of having to choose between his family's interests, the Iraq government's interests, and the interests of the United States. This concern is heightened because Applicant intends to return to live in Iraq in his \$50,000 house. AG ¶ 8 (a) does not apply.

Applicant has a conflict of interest between his loyalty to family and real estate in Iraq, and his loyalty to the United States. He has only been in the United States for 12 years, compared to 37 years in Iraq. He has not established significant connections to the United States to balance his strong connections to Iraq. Applicant also has close familial connections to his numerous relatives in Iraq, speaking with them monthly. It is not clear that Applicant will resolve any conflict of interest in favor of the United States. AG ¶ 8 (b) does not apply.

The Directive clearly states any doubt in security clearance cases must be resolved in favor of national security. I have great doubts about Applicant based on his real estate in Iraq and the murky alleged transaction with his wife to transfer title to her made this year. Applicant also wants to return to Iraq to live, and this declaration strengthens the doubt about him under AG ¶ 2(b), and it clearly applies here.

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) 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.

AG ¶ 2(c) requires each case be judged on its own merits. 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. Applicant is a mature adult, and knowingly purchased property in Iraq with the intention of making it his home in the future. While he became a U.S. citizen in 2006, his connections to Iraq remain strong and continuing. He diminished his credibility by his conflicting statements about the title to his Iraqi house. The transfer of title to his wife in March 2009 seems to be a paper transaction designed to obfuscate the true ownership of the house in an attempt to obtain a security clearance. Applicant’s consistent contact with his family members in Iraq, which has not altered over time, including up to the time of the hearing, shows voluntary actions and no behavior changes. These actions will continue and create potential for pressure, coercion, exploitation, or duress.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his foreign influence. I conclude the "whole-person" concept against Applicant.

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 to 1.g: Against Applicant

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.

PHILIP S. HOWE
Administrative Judge