

Applicant answered the SOR in writing on May 3, 2010, and requested a hearing before an administrative judge. DOHA assigned the case to another administrative judge on July 28, 2010, and reassigned it to me on August 2, 2010. DOHA issued a Notice of Hearing on August 5, 2010, scheduling the hearing for August 25, 2010. On that date, the Government offered Government Exhibits (GE) 1 through 3 into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through M into evidence without objection. DOHA received the transcript of the hearing (Tr.) on September 3, 2010.

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. The request and the attached documents pertinent to Iraq are included in the record as Hearing Exhibit (HE) 1 and contains attachments I through V (Tr. 14-15). Applicant did not object to my consideration of those Hearing Exhibits. The facts administratively noticed are limited to matters of general knowledge pertinent to Iraq, and 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, Applicant admitted the factual allegations contained in ¶¶ 1.a, 2.a, 2.b, and 2.c. He denied the allegations contained in ¶ 3.a.

Applicant is 42 years old. He was born in Iraq and attended high school there. He served in the Iraqi navy from 1984 to 1986. In 1990, he left Iraq as a refugee to escape Saddam Hussein's regime. He spent the next two years in a refugee camp in Saudi Arabia. In December 1992, he came to the United States. He studied English and took computer classes at a junior college. He became a naturalized U.S. citizen in December 2001.

In April 2003, Applicant married his wife, who was born in the Ukraine and was in the United States on a student visa. She subsequently became a U.S. citizen. They do not have children. They recently divorced although they still live together. He did not want the divorce.

After arriving in the United States in December 1992, Applicant held various positions. He worked as an assistant manager for a restaurant and more recently, was a manager for a large furniture store. In 2003, he applied for a linguist position with a defense contractor. He completed a security clearance application (SF 86) in October 2003. (GE 1.) He was not hired at that time. (Tr. 57.)

Both of Applicant's parents were born in Iraq. They are in their-mid sixties, and are citizens and residents of Iraq. His father is a retired farmer. His mother is a

homemaker. His father was arrested and tortured by Saddam Hussein's government in 1991. (GE 3.)

Applicant has five brothers and one sister, all of whom were born in Iraq and reside there. One brother worked as a linguist for the U.S. Armed Forces for a period of time. He is a teacher. One brother worked as a cook for a U.S. military base. One brother worked in construction at a U.S. military base, but now owns a grocery store. One brother is a farmer. One brother is blind and unemployed. His sister is a housewife. All of his siblings are married, except one brother who lives with his parents. None of those family members has been targeted by terrorists in Iraq. (Tr. 66.) Applicant speaks to his parents about once a month and his five siblings every couple months. He speaks to the brother who worked as a translator once a month. (Tr. 99.) He had a stepbrother who was arrested and tortured in 1991. He is dead. (GE 3.)

In November 2006, Applicant went to Iraq to visit his mother who was very sick. He had not returned to the country since leaving it in 1990 and had not seen his family since then. He used his U.S. passport to enter Kuwait. His brother met him at the Kuwaiti/Iraqi border and used family documents to gain admission for Applicant into Iraq. His brother was concerned that if Applicant were identified as an American, he would be in danger. Within the next day or so, Applicant's brother helped him obtain an Iraqi passport in his birth name. While there, he stayed at his parents' home. (Tr. 61.) When Applicant left three weeks later in December 2006, he gave the Iraqi passport to his brother after he exited the Iraqi border and entered Kuwait. (Tr. 39.) He did not bring it with him to the United States because he did not want it and is "proud to be an American." (Tr. 39.)

On March 28, 2008, Applicant re-applied for a linguist position with the same defense contractor and completed another security clearance application (e-QIP). In response to Section 17(d): "*In the last 7 years, have you had an active passport that was issued by a foreign government,*" he did not disclose his Iraqi passport. Applicant denied that he intentionally failed to do so, and admitted that he made a mistake. (Tr. 42.) He explained that after discussing the content of the e-QIP with his employer, they sent him the completed 33-page form, which he did not carefully review before signing it. (Tr. 43.) During an interview with a government investigator in October 2008, he explained in detail how he obtained the Iraqi passport, but did not know whether it had expired. He was willing to "renounce" the passport and his Iraqi citizenship. (GE 3 at 5.)

In December 2008, Applicant was hired by a defense contractor and returned to Iraq to translate for the U.S. forces. While working in Iraq, he had telephonic contact with his (interpreter) brother, who knew he was in the country. He did not have contact with other family members because he was not permitted to do so. They did not know he was in the country. (Tr. 61-62.) He does not have any plans to visit his family in Iraq, but would like his parents to come to the United States. (Tr. 79.) His brother, who worked as an interpreter, may also immigrate here. (Tr. 63.)

On August 16, 2009, Applicant was seriously injured in an explosion while on a military mission. He was transported from Iraq to another country and then to the United States. He was in a comatose state for approximately 40 days. (Tr. 91.) He has been in physical rehabilitation for almost a year. He thinks his physician will authorize him to return to work soon. He wants to resume his translating duties with the U.S. troops. (Tr. 92.) He said, "I want to continue and I want to do my best to support this country." (Tr. 53.)

Applicant's Iraqi passport remained with his brother until January 2010, when one of Applicant's friends, visiting Iraq, brought the passport to him in the United States. On April 22, 2010, Applicant's facility security officer destroyed the passport, which was scheduled to expire on November 1, 2010. (AE L.)

Applicant does not own any property in Iraq. He owned a home in the United States, but relinquished ownership to his wife as part of their divorce agreement. He does not have a retirement account, but does have a savings account here. (Tr. 92-93.) He stated that he has not received any type of benefits or privileges from Iraq. (*Id.*)

Applicant submitted a Certificate of Appreciation for his superior performance from March 2009 to August 2009 as an interpreter with the Armed Forces and four letters of recommendation. A sergeant who worked with Applicant wrote:

In the course of his duties, [Applicant] was called upon to visit remote and often hostile locations in order to converse with the local populace. This task required a high degree of competence and ability to adapt to evolving situations; of which I am able to say that [Applicant] was able to effectively provide through the performance of his duties. (AE C.)

Another sergeant with whom Applicant worked from March 2009 to June 2009 stated:

[Applicant] served as my personal interpreter during numerous meeting local Iraqi civil, tribal, and military leaders. During every engagement he accurately conveyed not only the words that were spoken but conveyed the tone and emotion of both parties. [Applicant's] understanding of the nuances of the Arabic language and Iraqi culture proved an invaluable tool in building rapport with and influencing these leaders.

[Applicant] is among the most competent interpreters I have had the opportunity to work with in my four years of conducting military operations. (AE E.)

Applicant credibly and sincerely asserted pride in his U.S. citizenship. He is very dedicated and enthusiastic about his ability to serve as a linguist for the U.S. military. He testified that "I love this country. I came here. They gave me my life and I'm proud to

be an American citizen and I'll love this country till the last day of my life. And I will do anything to support this country." (Tr. 104.)

Iraq

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.)

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 (AG) 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."

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 C, Foreign Preference

AG ¶ 9 expresses the security concern related to foreign preference:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Under AG ¶ 10, two conditions that could raise a security concern and may be disqualifying in this case are:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

(1) possession of a current foreign passport; and

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen.

When Applicant renewed his Iraqi passport in November 2006 after becoming a U.S. citizen in December 2001, he met the conditions in AG ¶¶ 10(a)(1) and 10(b).

After the Government produced substantial evidence of those two disqualifying conditions, the burden shifted to Applicant to produce evidence and prove a mitigating condition. AG ¶ 11 lists three conditions that may mitigate those security concerns:

(b) the individual has expressed a willingness to renounce dual citizenship;

(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor; and

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant expressed his willingness to renounce his Iraqi citizenship and strong loyalty to the United States. Applicant's security office destroyed the Iraqi passport in April 2010. The evidence supports the application of the referenced mitigating conditions.

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;¹ 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.

¹ 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).

Applicant has contact and connections with his parents, brothers and sister, who are residents and citizens of Iraq. He acknowledged that these relationships potentially create a heightened risk of foreign pressure or attempted exploitation because terrorists in Iraq are hostile to the U.S. interests and citizens. Applicant's relationship with his family members could also create a potential conflict of interest between Applicant's "obligation to protect sensitive information or technology and [his] desire to help" his family living in Iraq. The evidence is sufficient to raise these potentially disqualifying conditions.

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.

In the event terrorists would learn of Applicant's identity and presence in Iraq, his family members could be placed in positions that would force him to choose between them and U.S. interests. However, the possibility of that conflict occurring is diminished by two factors: Applicant has limited communication with his family members; and other than one brother, none of the family members knew of his work in Iraq because Applicant did not disclose it in conformance with employment regulations. Hence, AG ¶ 8(a) has some 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 has lived in the United States since 1992. He attended school here. He became a U.S. citizen in 2001. He worked at various jobs for 15 years before obtaining his current position. Prior to his recent divorce, he owned a home in the United States. He has bank accounts here. He does not have any financial interests in Iraq. He currently resides with his former wife, who is a naturalized U.S. citizen. There is no evidence that he has connections or contact with people living in Iraq other than his immediate family members. He expressed a strong sense of loyalty to the United States

and zeal for his job. His supervisors, who have worked in close contact with him in a combat zone, consider him to be an ethical and dedicated man, and a valuable asset to the U.S. War on Terror.

AG ¶ 8(c) has some application to the security concerns raised, as Applicant's contacts with his five siblings are generally infrequent and casual. He telephones them every two or three months. However, he speaks to his parents and one brother every month. Since leaving Iraq in 1990 as a refugee, he returned to see his family only once, in 2006.

Guideline E, Personal Conduct

The security concern relating to the guideline for personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

One Personal Conduct Disqualifying Condition is particularly relevant and potentially disqualifying in this case. Guideline ¶ 16(a) provides that the "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities" may raise a security concern. Applicant incorrectly answered one question on the March 2008 e-QIP. He denied that he intentionally falsified his answer or attempted to deceive the Government.

When a falsification allegation is controverted or denied, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred. ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004).

SOR ¶ 3.a alleged that Applicant falsified the March 2008 e-QIP because he did not disclose that he had obtained an Iraqi passport in November 2006. Applicant admitted the omission, but asserted that he made a mistake by not carefully reviewing the 33-page e-QIP after his employer prepared it for his signature. After listening to his testimony, reviewing the detailed information he revealed during an October 2008 interview regarding that passport, and considering the fact that he left the Iraqi passport

with his brother in December 2006, Applicant's explanation is credible. His omission may have been negligent, but does not rise to a level of intentional wrongdoing in an effort to deceive the Government. Nor does that omission raise questions about his reliability or ability to protect classified information. The evidence does not establish deliberate falsification. Accordingly, Guideline E is found in his favor.

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. Four circumstances weigh against Applicant in the whole-person analysis. First, there is a significant risk of terrorism and human rights abuses in Iraq. More importantly for security purposes, terrorists in Iraq are hostile to the United States and actively seek classified information. Terrorists, and even friendly governments, could attempt to use Applicant's family members to obtain such information. Second, he had numerous connections to Iraq before he left Iraq as a refugee in 1990. Following his birth, he spent his formative years there. He attended high school there and served in the Iraqi navy for two years. Third, his parents and six siblings remain residents and citizens of Iraq. Fourth, he maintains some contact with these family members and obtained an Iraqi passport in 2006, in order to visit his sick mother and avoid disclosing his U.S. citizenship and jeopardize his safety.

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 17 years, and

has been a naturalized citizen since 2001. His former spouse (with whom he still resides) has been living in the United States since 2003 and is a naturalized citizen. He owned property here and has a bank account. After leaving Iraq in 1990, he did not return until November 2006, when he visited his sick mother. The next time he returned was in December 2008 as a translator. His ties to the United States are stronger than his ties to family members living in 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. In his employment with a defense contractor, he provided vital and direct support to the U.S. Armed Forces from December 2008 until August 2009. He worked diligently and courageously in an important capacity, which resulted in a serious physical injury. His supervisors assessed him as loyal, trustworthy, conscientious, and responsible. They praised his dedication and capabilities. While working in Iraq, he did not have any physical contact with his family. There is no derogatory information about him in the record.

Applicant held an interim security clearance during his work with the U.S. Armed Forces 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) 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 mitigated the security concerns pertaining to foreign preference and foreign influence. 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 that Applicant mitigated the foreign preference and foreign influence security concerns, and that the record does not contain sufficient evidence to raise a personal conduct security concern.

Formal Findings

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

Paragraph 1, Guideline C:	FOR APPLICANT
Subparagraphs 1.a (1) through 1.a.(3):	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a through 2.c:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraph 3.a:	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.

SHARI DAM
Administrative Judge