



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



In the matter of:)	
)	
)	ISCR Case No. 09-01323
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Nichole Noel, Esquire, Department Counsel
For Applicant: William F. Savarino, Esquire

January 28, 2010

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted a security clearance questionnaire on October 31, 2008. On August 27, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B, Foreign Influence, for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On September 16, 2009, Applicant answered the SOR and requested a hearing before an administrative judge. Department counsel was prepared to proceed on October 16, 2009. The case was assigned to me on October 22, 2009. On November 5, 2009, a Notice of Hearing was issued scheduling the hearing for November 18, 2009. The hearing was held as scheduled. The government offered Government Exhibits (Gov) 1 - 3 which were admitted without objection. The government requested that administrative notice be taken of three sets of documents. The documents were marked as Administrative Notice Documents (Admin Not) I - III without objection. Applicant

testified, called two witnesses and submitted two exhibits which were admitted as Applicant Exhibits (AE) A - B without objection. DOHA received the transcript of hearing on November 30, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Administrative Notice

The following information is from the administrative notice documents:

Iraq

In 2003, the United States led a coalition to remove Saddam Hussein from power in Iraq. Following the swift invasion and successful removal 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. (Admin Not I)

In 2007, 92% of Iraq's exports were 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. (Admin Not I)

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 U.S. and Iraqi aggressive governmental action against terrorists, the threat of terrorism in Iraq remains very high. Terrorist groups can conduct intelligence activities as effectively as state intelligence services. (Admin Not I)

Jordan

Jordan is a constitutional monarchy with a developing economy and a modern infrastructure. Jordan has followed a pro-western foreign policy and has had close relations with the United States for more than four decades. (Admin Not II)

The Jordanian government respects human rights in some areas, but its overall record continues to reflect some problems. Problems include: torture, arbitrary arrest, prolonged detention, denial of due process, infringement on citizen's privacy rights,

political detainees, and restrictions on freedom of speech, press, assembly, association, and movement. (Admin Not II)

Under Jordanian law any male relative may prevent a woman or child from leaving Jordan by placing a hold on their travel with the Jordanian authorities, even if they are U.S. citizens. Jordanian law applies to dual U.S.-Jordanian citizens. (Admin Not II)

The Jordanian government publicly condemned terrorist acts throughout the world, practiced strict security measures, passed new anti-terror legislation, and disrupted several terrorist plots. Despite Jordan's aggressive pursuit of terrorists, the threat of terrorism remains high in Jordan. Al-Qaida has focused terrorist activities against Jordan and U.S. interests in Jordan. Terrorist organizations have targeted the United States for intelligence through human espionage and by other means. International terrorist groups have conducted intelligence operations as effectively as state intelligence services. (Admin Not II)

Syria

Since March 1963, the Syrian Arab Republic has been ruled by an authoritarian regime. Syria is currently included on the Department of State's List of State Sponsors of Terrorism due to the presence of several terrorist groups in Syria. According to the Department of State, the Syrian government continues to provide political and material support to Hizballah and Palestinian terrorist groups. Several terrorist groups base their external leadership within Syria's borders, and maintain offices in Syria. Syria is "one of the primary transit points for foreign fighters entering Iraq." (Admin Not III)

The Syrian government's human rights record is not good. The United States State Department notes the following human rights abuses occurring in Syria: systemic repression of citizens' abilities to change government; arbitrary or unlawful deprivation of life; torture and physical abuse of prisoners and detainees; arbitrary arrests and detentions; restrictions on freedoms of speech, press, assembly, and association; government corruption; violence; and discrimination against women. Syrian security forces have placed foreign visitors under surveillance, have monitored telephones, and have searched hotel rooms and possessions of foreign visitors. (Admin Not III)

A travel warning is in effect for Syria warning U.S. citizens of ongoing safety and security concerns in Syria. American citizens are urged to consider carefully the risks of travel to Syria and to take adequate precautions to ensure their safety. (Admin Not III)

On February 13, 2008, President Bush expanded a 2004 Executive Order implementing sanctions against Syria for its support of terrorism in the Middle East. In May 2009, President Obama continued the declaration of a national emergency, "[b]ecause the actions and policies of the Government of Syria continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States." (Admin Not III)

Findings of Fact

In her Answer to the SOR, dated August 15, 2009, Applicant admits to all the SOR allegations.

Applicant is a 23-year-old administrative assistant employed with a government contractor who is applying for a security clearance. She has worked as an institutional contractor at a government agency since October 24, 2008. This is her first time applying for a security clearance. She has a bachelor's degree in global health and development. She is single and has no children. (Tr at 42-45; Gov 1.)

Applicant was born and raised in the United States. She is a United States citizen. She was educated in the United States. She does not hold dual citizenship. She does not possess a foreign passport. Both of her parents are naturalized U.S. citizens who were born in Iraq. They met each other in medical school. They immigrated to the United States to complete their medical residencies in the early 1980s. They became United States citizens in 1989. She has two older sisters who were born and raised in the United States. (Tr at 37, 41-42, 77; Gov 1; Gov 3)

Applicant's mother is a pathologist who works at a U.S. hospital in the city and state where Applicant was born and grew up. Her father is a physician who works at a hospital in Saudi Arabia. He moved to Saudi Arabia in November 2007. Applicant has had no contact with her father since August 2008. She discovered that her father was unfaithful to her mother. Her parents are in the process of divorcing. Applicant, her sisters, and her mother told him that they do not wish to communicate with him. (Tr at 39 – 41, 68-69; Gov 3)

Applicant grew up speaking Arabic at home. When she graduated from college in the spring of 2008, she learned of an opportunity to enhance her Arabic language skills by attending a summer course at the University of Jordan that was sponsored by a United States university. The course was titled, "Arabic for Speakers of Other Languages." She learned about the course from her cousins who were students of the professor who sponsored the trip. About 15 students went. Her mother paid for the trip. While in Jordan, she shared an apartment with other students from the United States who were taking the course. She lived in Jordan from June 2008 to August 2008. During her stay in Jordan, she volunteered four hours a week with the organization Doctors Without Borders. Her volunteer work consisted of playing games and overseeing various educational activities with Iraqi refugee children. (Tr at 60-62; Gov 3)

When the course ended in August 2008, Applicant's sister flew to Jordan from the United States and her father flew to Jordan from Saudi Arabia. They drove to Syria which is about two hours driving distance from Amman, Jordan. They traveled around Syria for three days. One evening they had dinner with Applicant's maternal uncle, his wife, and their three children. They are citizens of Iraq but are currently refugees in Syria. They left Iraq because it was unsafe. Her uncle and aunt are unemployed. The three children are students. She previously met her aunt and uncle when she was six

years old. She has not contacted her uncle's family since returning to the United States in August 2008. She believes her mother still communicates with her uncle. After the visit to Syria, she and her sister traveled to Lebanon for several days. They also traveled to Jerusalem. The purpose of their travels was for sightseeing. (Tr at 48-52, 64-65; Gov 3)

Applicant's paternal grandfather is a citizen of Iraq. He served as head of one of the Iraqi government agencies from the late 1960s to the early 1970s. He also served as a member of the Iraqi Parliament. Applicant does not know how long her grandfather served in the Iraqi Parliament. He has not served in the Iraqi Parliament for 20 years. He is over 90 years old and is in poor health. She last heard that he was seeking medical treatment in Jordan. Applicant has not had direct contact with her grandfather since she was six years old. She met him only once or twice. She does not have a relationship with her grandfather. In the past, she has had indirect contact with her grandfather through e-mails that her grandfather sends to her sister and father. (Tr at 46-47; Gov 3; Response to SOR)

Applicant's maternal aunt is an Iraqi citizen currently residing in Jordan. She has lived in Jordan as a refugee since 2001. She is unemployed and is divorcing her husband. Applicant visited her aunt on several occasions during the summer of 2008 when she was studying Arabic in Jordan. She talked to her about once a week and met her for dinner a couple times. Previously, she met her aunt when she was about six years old. She also met her in 2003, when she and her mother went on a two week vacation to Turkey. They traveled to Jordan for about three days to visit her aunt. She has had no contact with her aunt after leaving Jordan in August 2008. Her mother communicates with her aunt. (Tr at 52-55; Gov 3)

All of Applicant's assets are in the United States. She has no assets overseas. Aside from her paternal grandfather, Applicant is unaware of any extended family members working for a foreign government or in the foreign military. She does not provide support to overseas relatives. She is close to her sisters and mother. She has one friend, a United States citizen, who lives in Thailand. All of her other close friends live in the United States and are United States citizens. (Tr at 56-59) Applicant has no immediate future plans to travel to the middle east. There is a possibility that she may travel to Iraq on official business in the future. Her future goal is to join the Foreign Service. (Tr at 67)

Applicant's supervisor wrote a letter on her behalf. She has supervised Applicant since February 2009. Before her interim security clearance was revoked, most of her contact with the Applicant was over the telephone because she worked at a different location. For the past two months, Applicant has worked with her in the office on a daily basis. She recently completed Applicant's annual performance appraisal. She contacted Applicant's colleagues and immediate supervisor to seek inputs about her performance. Applicant received the highest marks in all categories – leadership, attitude, efficiency, team spirit, and results. Applicant recently provided support to a U.S. - Iraq Business and Investment Conference. Feedback about Applicant's performance during the

conference included the following: “[Applicant’s] exceptional organizational skills, superior communication ability in Arabic and English, professional demeanor, team attitude, and perseverance to get the job done were elemental to ensure [the agency’s] goals were accomplished, not to mention [Applicant] provided a tremendous service to our interagency colleagues.” Applicant’s supervisor describes Applicant as dependable, honest, and trustworthy. (AE A)

The program officer for supporting the Iraq mission testified on Applicant’s behalf. He is a foreign service officer. He has been with the government agency since late 2001. He has held a Top Secret security clearance for 21 years. Applicant has worked in his office as a contractor since 2008. He works with her on a daily basis. Applicant provides administrative and logistical support. She helps process employees who are deploying to Iraq. He is not her supervisor because she is a contract employee. He has provided positive feedback to her employer. She is very reliable, professional, and competent. She handles sensitive and Privacy Act information very carefully. He thinks of himself as Applicant’s mentor. Applicant speaks fondly of her immediate family members. He has never heard her talk about overseas relatives. He is aware that she had the opportunity to travel in the area of the world where some of her relatives lived and that she met her family members when she was in the area. He is confident in her ability to protect classified information. (Tr at 16-26)

The Travel and Training Coordinator for the Iraq Program also testified. She and Applicant started work on the same day. She possesses a Secret clearance. They interact on a daily basis. She states that Applicant is exceptional. She is very grounded, intelligent, and dependable. She is aware that Applicant has relatives overseas. She is aware that Applicant’s mother, two sisters, a brother-in-law, and aunts live in the United States. Applicant is very devoted to her mother and sisters. She has never expressed a preference for overseas family members. She visited her overseas relatives in the summer of 2008, because she was in that area of the world. Applicant does not drink alcohol or use drugs. She is trustworthy. (Tr at 27-35)

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 required 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.

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

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

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

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.

The guideline notes several disqualifying conditions that could raise security concerns. Of the Foreign Influence Disqualifying Conditions (FI DC), the following apply to Applicant's case:

FI DC ¶ 7(a) (*contact with a 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*)

FI DC ¶ 7(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 paternal grandfather is a citizen of Iraq, who currently resides in Jordan. In the late 1960's to the early 1970s, he served as the head of one of Iraq's government agencies. He also served as member of the Iraqi parliament. Applicant's maternal uncle, aunt, and three cousins are citizens of Iraq who currently reside in Syria. Her maternal aunt is a citizen of Iraq who currently resides in Jordan.

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 a heightened risk 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)

In this case, FI DC ¶ 7(a) and FI DC ¶ 7(b) apply because Applicant has contact with and connections to her family members in Iraq, Syria, and Jordan. Her extended family members are refugees from the Iraq war. Her contact with her extended family members creates a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion.

Three of the six mitigating conditions under the Foreign Influence guideline (FI MC) may apply to the facts and circumstances of this case:

FI MC ¶ 8(a) (*the nature of the relationship with foreign persons, the country in which these persons are located, or the position 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.*)

FI MC ¶ 8(b) (*there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, or 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)

FI MC ¶ 8(c) (contact or communication with foreign citizens is so casual and infrequent that there is little likelihood it could create a risk of foreign influence or exploitation)

FI MC ¶ 8(a) and FI MC ¶ 8(c) do not apply with respect to Applicant's paternal grandfather. His past status as a high ranking official under the previous Iraqi regime as well as a member of parliament creates a heightened risk of foreign influence or exploitation. Although he is now elderly and ill and Applicant has had minimal contact with her paternal grandfather, there is a remote possibility that dangerous elements within Iraq, or Jordan could attempt to use her grandfather to coerce or pressure Applicant.

There is also a remote possibility that dangerous elements within Jordan or Syria could attempt to use her maternal aunt who resides in Jordan, and her maternal uncle and his family who reside in Syria to coerce or pressure Applicant. However, Applicant's ties to her maternal aunt who resides in Jordan and her maternal uncle and his family who reside in Syria are not strong. Applicant met her extended relatives who reside in Syria in August 2008, because she was studying in Jordan, only two hours from where they live. She has had no contact with them since that visit and did not have regular contact prior to the visit, only meeting them once before when she was six. Applicant has had more contact with her aunt who resides in Jordan. However, she has had no contact with her after completing the Arabic language course that she took at the University of Jordan. She has not had regular contact with her aunt while growing up. She met her twice prior to the summer of 2008, once when she was six and once in 2003, when she and her mother visited her aunt in conjunction with a trip to Turkey.

Regardless of the risks based on the status of Applicant's extended relatives who reside in Syria and Jordan, her deep and longstanding relationships and loyalties in the United States support the conclusion that she can be expected to resolve any conflict in favor of the United States interest. FI MC ¶ 8(b) applies. Applicant was born and raised in the United States. She attended elementary, high school, and college in the United States. While she studied Arabic abroad in Jordan in the summer 2008, the course was sponsored by a United States university. Her closest familial relationships are with her mother and two sisters, all of whom reside in the United States. While her father resides in Saudi Arabia, she has had no contact with him in over a year due to a family conflict. Considering Applicant's background and the need for personnel who speak the Arabic language, Applicant is the ideal candidate for a security clearance despite the risks her extended family members who reside overseas may create. Her deep and longstanding relationships and loyalties in the United States outweigh any potential for conflict. The Guideline B concern is mitigated.

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.

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 considered the totality of Applicant's family ties to her uncle, aunt, and three cousins who are citizens of Iraq, residing in Syria. I considered the totality of Applicant's family ties to her aunt who is a citizen of Iraq, residing in Jordan. I considered that Applicant's paternal grandfather is a former head of an Iraqi government agency and a former member of the Iraqi parliament. I also considered that she has had minimal contact with her paternal grandfather, having met him only once when she was six.

I also considered that Applicant is highly regarded at her current place of employment. She was born and raised in the United States. She was educated in the United States. The family members that she is closest to, her mother and two sisters, are citizens of and reside in the United States. Applicant has had minimal contact with her extended family members who reside overseas. She had the opportunity to visit with them in the summer of 2008, when she was in the area taking an Arabic language course at the University of Jordan. The course was sponsored by a United States university. She has had no contact with her relatives overseas since August 2008. While Applicant's family members living in Syria and Jordan raise a potential security threat due to the very nature of familial relationships, Applicant's significant ties to the United States mitigate the security threat. Her deep and longstanding relationships and loyalties in the United States strongly support the conclusion that Applicant would resolve any attempt to exert pressure, coercion, exploitation, or duress in favor of the United States.

Guideline B is a security concern that affects applicants through no fault of their own. Applicant's family ties and the current situation in the middle east make it a

substantial burden to mitigate the concerns raised under foreign influence. In Applicant's case, her significant personal relationships and contacts within the United States outweigh the concerns raised by having relatives who are citizens of Iraq, who currently reside in Syria and Jordan. Applicant's background and Arabic language skills would enhance the United States government's mission to reconstruct Iraq. Overall, the record evidence leaves no questions or doubts as to Applicant's eligibility and suitability for a security clearance. Foreign Influence security concerns are mitigated.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant

Conclusion

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

ERIN C. HOGAN
Administrative Judge