



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



In the matter of:)
)
) ISCR Case No.09-02893
)
)
Applicant for Security Clearance)

Appearances

For Government: Braden Murphy, Esquire, Department Counsel
For Applicant: Alan V. Edmunds, Esquire

January 26, 2010

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 14, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On April 23, 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 on or about May 29, 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 setting the hearing for August 19, 2009. On July 30, 2009, the August hearing date was continued because Applicant was leaving for Iraq. On October 29, 2009, DOHA issued another Notice of Hearing setting the case for November 19, 2009. On that date, the Government offered Exhibits (GE) 1 through 4 into evidence, which were admitted without objection. Applicant testified and called two witnesses. He offered Exhibits (AE) A through O into evidence without objection. DOHA received the transcript of the hearing (Tr.) on December 1, 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, Jordan, and Syria. The request and the attached documents pertinent to Iraq are included in the record as Hearing Exhibits: Iraq (HE-Iraq) I through VI (Tr. 18-20). Those documents pertinent to Jordan are included in the record as Hearing Exhibits: Jordan (HE-Jordan) I through VI (Tr. 20-25). Those documents pertinent to Syria are included in the record as Hearing Exhibits: Syria (HE-Syria) I through III (Tr. 25). Applicant did not object to my consideration of those Hearing Exhibits. The facts administratively noticed are limited to matters of general knowledge and matters pertinent to these three countries 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, dated May 29, 2009, Applicant admitted the factual allegations contained in ¶¶ 1.a through 1.h of the SOR and provided explanations.

Applicant is 51 years old. He was born in northern Iraq, in the area commonly referred to as the Kurdish section of Iraq. He attended high school and undergraduate college there, receiving a bachelor's degree in mechanical engineering in June 1985. He completed three years of mandatory military service in August 1988. He was then unemployed and lived at home until March 1991 when he, his wife, and two children left Iraq to escape Saddam Hussein's regime after Operation Desert Storm. They went to Jordan and on to Lebanon where they lived for eight months before moving to Spain. In October 1993, Applicant, his wife, and their two children arrived in the United States as refugees. (GE 2; 4.) In January 2000, he became a naturalized U.S. citizen. His wife became a naturalized U.S. citizen in August 2000, and his two children became U.S. citizens in July 2001. His two other children were born in the United States. His wife and children live with him in the United States. Two of his children attend college. His wife works as a medical biller. (Tr. 87.) Applicant speaks English, Arabic, Chaldean, and Spanish. (Tr. 99.)

Both of Applicant's parents were born in Iraq. His father is 80 years old. He is an Iraqi citizen, residing in the United States as a permanent alien since 1996. His mother is 73 years old. She resides in the United States and became a U.S. citizen in December 2002. His parents receive social security from the federal government. His father owned a house in Iraq and operated a successful ice cream business with Applicant's uncle there in the 1990's. When his father left Iraq, he gave his interest in the house and business to Applicant's brother, who lives in Iraq. (Answer; Tr. 56; 68.) There is no information in the record regarding the status of Applicant's uncle.

Applicant is one of seven children, all born in Iraq. Applicant has three brothers and three sisters. Two of his brothers are residing in the United States. One became a citizen in November 1992, and the other is seeking U.S. citizenship. (GE 2.) Applicant's third brother is a resident and citizen of northern Iraq. In 2006, his brother went to Syria for a month after someone threatened to kidnap him for ransom. (Answer.) He has not seen this brother since 1991. He spoke to him briefly in August 2008 and about six months ago. (Tr. 74; GE 2.) Applicant's brother is aware that he is a linguist for the U.S. military, but knows nothing additional about his work. (GE. 2; Tr. 92.) One of Applicant's sisters resides in the United States. She became a citizen in April 1995. Another of his sisters is a citizen and resident of northern Iraq. She is a housewife and her husband works in construction. The last time he spoke to her was in August 2008. (Tr. 75.) Applicant received permission from his command to speak to his sister and brother while he was in Iraq during a 2008 deployment. (Tr. 53.) His third sister, a veterinarian, is an Iraqi citizen and resides in Jordan with her husband. They moved there in 2006 after his brother-in-law was kidnapped and tortured by terrorists. His sister paid an \$80,000 ransom for his release. Applicant last spoke to her in January 2008. (Tr. 82) She knows Applicant works as a translator for the U.S. military, but nothing more. (GE 2; Tr. 92.) After Applicant learned of his brother-in-law's plight, he immediately reported it to his command. (Tr. 80-81.)

Applicant's mother-in-law is deceased. His father-in-law is an Iraqi citizen and a registered U.S. alien. He is a carpenter in Iraq and owns a coffin business there. He travels between the United States and Iraq. While here, he stays with Applicant. (Answer.) His wife's three sisters are residents and citizens of Iraq. His wife is sponsoring them for U.S. citizenship. (GE 2.) He has not seen his sisters-in-law since 1991 and does not speak to them. (Tr. 85) Applicant does not have regular contact with any extended family members living in Iraq. (Tr. 86.)

After arriving in the United States in October 1993, Applicant held various positions and was unemployed for long periods of time: from October 1993 to July 1995; August 2000 to October 2000; March 2001 to August 2001; November 2001 to August 2002; August 2004 to January 2005; and from January 2006 until June 2006 when he obtained his position as a linguist for a defense contractor. (GE 4.) On June 17, 2006, Applicant deployed to Iraq for the first time since leaving the country in 1991. He has worked there for the last two-and-a-half years and returned home every six months for two weeks. (Tr. 96.) He has held an interim clearance for three years. (Tr. 14.)

Applicant owns a house and an apartment in the United States. He has no financial interests in Iraq. (Tr. 56.) 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.) There is no evidence in the record that Applicant breached any security policies or procedures while holding an interim security clearance in Iraq.

Applicant called two witnesses. Both of them met Applicant in January 2003 while attending graduate school together. They have some knowledge of his Iraqi heritage, but little knowledge of his current position. Having known him for over six years, they have no reservations about his loyalty to the United States. (Tr. 28-42.)

Applicant submitted ten letters and three memoranda attesting to his capabilities and contributions to the U.S. Armed Forces' efforts in the Global War on Terror. In April 2007, the Commanding Officer for Applicant's division wrote that Applicant "has served with the [Division] in the most kinetic and dangerous area of [Iraq] . . . and his loyalty is unquestionable." (AE E.) The Captain of the Civil Affairs Team he worked with wrote that the city in which Applicant worked "is a very dangerous city at times. . . [Applicant] has never refused a mission due to danger, regardless of the numerous times he has been under attack. His reliability and fearlessness are inspiring." (AE I) The Chief Warrant Office for Applicant's unit wrote in October 2008 that his division's "mission in Iraq is extremely unique and requires the highest level of trust and confidence. [Applicant] has proven himself as a trustworthy and extremely loyal member of this team." (AE H.) In an End of Service Assessment, dated May 31, 2009, Applicant's Staff Sergeant complimented and praised Applicant's service in Iraq. He stated:

[Applicant] has been influential in minimizing several threats to Coalition Forces (CF), the Iraqi people, as well as preserved relationships between key leaders within the community and local commanders. [He] has been the crucial factor in several operations in the [province] dating as far back as 2007 when the stability of the area was still in question. [Applicant] has put his life and livelihood [sic] in jeopardy for the sake of aiding CF and establishing peace in this country of Iraq and his transfer comes as a great loss to us. (Ex. M)

Applicant credibly and sincerely asserted his pride in his U.S. citizenship at the hearing. He is very enthusiastic about his role as a cultural advisor to the U.S. military. (Tr. 78.) He applied for the position for financial reasons and in order to help the United States in its war on terror. "I want to do something good to the country which gave me its name. I have a deep love for the United States and a great appreciation for all of the things this land of opportunity has blessed me with." (Answer.)

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-Iraq: 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-Iraq: I, III)

Jordan

I take administrative notice of the following facts: Jordan is a small, Middle Eastern country governed by a constitutional monarchy. Jordan has a pro-Western foreign policy, and has had close relations with the United States for more than forty years. Torture, arbitrary arrest, prolonged detention, denial of due process, and restrictions on freedom of speech are Jordanian human rights problems. Despite aggressive governmental action against terrorists, the threat of terrorism in Jordan remains high. Terrorists in Jordan target U.S. interests to exploit and undermine U.S. national security interests. Terrorist groups conduct intelligence activities as effectively as state intelligence services. (HE-Jordan: I, II, III)

Syria

I take administrative notice of the following facts: Syria is a Middle Eastern country with about 19 million citizens. Syria is on the United States' list of state sponsors of terrorism. Since March 1963, it has been ruled by an authoritarian, one-party, socialist Ba'athist regime. It provides financial and military support to terrorist organizations. It ruled part of Lebanon, a neighboring country, for over a decade. It was determined to be involved in the assassination of former Lebanese prime minister who opposed Syrian interference in Lebanese affairs. In 2004, the U.S. Government banned the export of Syria of products other than food and medicine, and prohibited Syrian air craft from landing in the United States. This executive order was later expanded. Syria has a history of human rights abuses. Many Iraqi refugees fled to Syria and total about 1.3 million. There is a U.S. State Department warning about traveling to and within Syria. Its human rights record has worsened over the years. (HE-Syria: I, II, 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;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.

In this case, Applicant has contact and connections with his brother, two sisters, father-in-law, and three sister-in-laws, who are residents and citizens of Iraq. He also has contact and connections with his sister, who is a citizen of Iraq and resident of Jordan. His relationships 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 that 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

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).

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 has some contact with two siblings and three sisters-in-law, who reside in Iraq. He has more frequent contact and connections with his father-in-law, who travels between Iraq and the United States. He has some contact with his sister who lives in Jordan because her husband was kidnapped by terrorists. All of them know that he is a linguist for the United States. 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 his 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. The same is true for his sister living in Jordan.² 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 October 1993. Two of his children were born in the United States; his mother and two siblings are naturalized U.S. citizens, residing here; his father is a registered alien, residing here; and his brother lives here and is applying for citizenship. He owns property in the United States. His wife works for a physician in his home city. 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 consistent connections or contact with any people other than his family members living in foreign countries, three of whom

²Applicant's brother lived in Syria for one month in 2006 after receiving a threat. There is no evidence indicating that the brother has had any additional connections to Syria. Hence, there is insufficient evidence to raise security concerns related to that country.

hope to immigrate to the United States soon. He expressed a strong sense of loyalty to the United States.

Applicant has very limited communication with his family in Iraq and sister in Jordan. He has not seen any of them, other than his father-in-law who frequently visits the United States, since 1991. He spoke to his siblings in 2008 and his brother again six months ago. Hence, AG ¶ 8(c) has some application, as those contacts are generally infrequent and 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, the security concerns do not arise from any questionable conduct by Applicant, but rather circumstances that warrant further analysis. First, there is a significant risk of terrorism and various human rights abuses in Iraq and Jordan. More importantly for security purposes, terrorists in these countries are hostile to the United States and actively seek classified information. Terrorists, and even friendly governments, could attempt to use Applicant's siblings and in-laws to obtain such information. Second, he had numerous connections to Iraq before he immigrated to the United States in 1993. Following his birth, he spent his formative years there. He was educated at an Iraqi university. Third, his three siblings, and in-laws, remain residents and citizens of Iraq, and one is located in Jordan. Fourth, he has some contact with

these family members and his wife is attempting to bring her three sisters to the United States, indicating that she has closer contact with them.

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 16 years, and has been a naturalized citizen for ten years. His spouse has been living in the United States since 1993 and is a naturalized citizen, as are his two Iraqi-born children. His other two children were born here. His parents live here, as do three other siblings. He owns property here. Out of his sense of patriotism and love for the United States, he joined a company providing direct support to the U.S. Armed Forces, as a cultural advisor. After leaving Iraq in 1991, he did not return until 2006 when he was deployed there. 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, for which he has a "deep love," are much stronger than his ties to family members living in Iraq or his sister in Jordan. 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. He has worked diligently for a defense contractor for several years in an important capacity. In fact, he jeopardizes 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 a dedicated employee and U.S. citizen. When he returned to Iraq in 2006 with the U.S. military, he did not have any physical contact with his family, and obtained permission to call them from his supervisor before contacting them. When he learned that his brother-in-law was kidnapped, he promptly informed his command. No witnesses recommended denial of his security clearance. There is no derogatory information about him in the record.

Applicant has held an interim security clearance during his tenure with the U.S. military 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 influence.³ 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 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraphs 1.a through 1.h: 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

³ 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.