



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



In the matter of:)
)
) ISCR Case No.09-03766
)
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: Shawn J. Coppins, Esquire

February 19, 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 April 13, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On August 28, 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 October 13, 2009, and requested a hearing before an administrative judge. DOHA assigned the case to me on December 10, 2009, and issued a Notice of Hearing setting the hearing for January 7, 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 Q into evidence without objection. The record remained open until January 22, 2010, to give Applicant an opportunity to submit copies of some of his exhibits, which he timely did. DOHA received the transcript of the hearing (Tr.) on January 19, 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 Exhibits (HE) I through VI (Tr. 17-20). 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 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 through 1.c of the SOR.

Applicant is 59 years old. He was born in southern Iraq. He attended high school and undergraduate college there. In June 1972, he received a medical degree with a radiology specialty and then completed two years of mandatory military service in May 1975. He subsequently practiced medicine in a public clinic in the morning and worked at his private clinic in the afternoon. (Tr. 35, 79.)

In 1995, Applicant, his wife, and three children, now ages 30, 27, and 22, fled Iraq to escape Saddam Hussein's regime and potential interrogation. (Tr. 30.) They lived in Country One for four years before receiving refugee status and arriving in the United States in 1999. (Tr. 81.) In May 2006, he became a naturalized U.S. citizen. His wife became a naturalized U.S. citizen in December 2005. His son and one daughter became U.S. citizens in February 2006, and the other daughter in December 2007. Two of his children have graduated from U.S. universities and his other child is completing her degree. His wife does not work outside of the home. Applicant speaks English and Arabic. None of his family members have returned to Iraq. (Tr. 99.)

After arriving in the United States in 1999, Applicant has held various positions. He has worked as a case worker, an interpreter, and a director of a youth project. He was unemployed from September 2001 until December 2002, while he attended college full-time and pursued a degree as a medical sonographer. (GE 1.) He subsequently

became licensed and worked in hospitals from January 2003 to March 2007, when he obtained a position with a defense contractor. (GE 1.)

Both of Applicant's parents were born and raised in Iraq. They are deceased. His father owned a large shoe business before his death. His mother was a homemaker. (Tr. 84; 96.)

Applicant is one of six children, all born in Iraq. Applicant has one brother and four sisters, all of whom are citizens and residents of Iraq. Applicant's brother is a high school teacher for a public school. One of Applicant's sisters is a pharmacy professor at an Iraqi university. (Tr. 35.) Another sister works as a bookkeeper for an oil company. (Tr. 36.) His third sister is a soil physicist. (*Id.*) His fourth sister is a clerk for a company that builds public projects. (Tr. 37.) Three of his brothers-in-laws are deceased; the other brother-in-law is a retired civil engineer. (Tr. 89.) All of his siblings have some connection to the Iraqi government because it is the primary employer for all citizens. None of the agencies or institutions that employ his siblings is involved with public policy. (Tr. 86.)

Applicant did not have any communication with his siblings after he left Iraq in 1995 until it was liberated in 2003. At that time, he telephoned his siblings to inform them that he was alive and living in the United States. (Tr. 33; 37; 85.) From 2003 to 2007, he had limited telephone contact with them because Iraq had poor communication technology. Since starting his position in May 2007, he calls his brother and one sister every two to three months. (Tr. 86.) He has not spoken to the other two sisters for more than a year. (Tr. 86.) His siblings do not know that he works in Iraq. (Tr. 85.) He has not seen any of them since he left in 1995. (Tr. 85.)

In May 2007, Applicant returned to Iraq for the first time since leaving the country in 1995. He was deployed as a bilingual/bicultural advisor to the U.S. troops, using his medical background and language skills in the base's hospital. (Tr. 47.) While working there, he does not use his birth name, but is referred to as Dr. [x] for security reasons. He does not want anyone knowing his real name "because this is very dangerous for my siblings, for my family in Iraq." (Tr. 39.) He does not want his family targeted by terrorists. (*Id.*) He has worked there for the past two-and-a-half years and returns home every four to six months for two week intervals. (Tr. 99.) He held an interim clearance for a period of time. (Tr. 8.)

In 1992, Applicant purchased a vacant piece of property located in a village outside an Iraqi city's limits for \$30,000. Due to his ethnicity, he was not permitted to own property within the city boundaries. (Tr. 42-44.) After he fled the country, he assumed the property was confiscated by the government. (Tr. 43.) While in Iraq in 2007, he learned that the property is vacant. It is now worth \$10,000 or less. (Tr. 44.) He has not visited the property while living in Iraq because he is not permitted to leave the base. (Tr. 45.) He does not know what to do about the property. He would like to sell it, but does not believe he will be able to do so. He is not particularly concerned about it. (Tr. 90-91.) He has no other financial interests in Iraq. (Tr. 92.)

Applicant owns two houses in the United States, one purchased for \$206,000 and another recently purchased for \$230,000. (Tr. 90-91.) 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 submitted five letters, seven Certificates of Appreciation, and several performance evaluations, attesting to his capabilities and contributions in providing health support services for Operation Iraqi Freedom. Applicant's Commanding Officer from October 2007 to February 2008 wrote, "Of all the people that I have worked with, [Applicant] possesses some of the highest values, morals, and integrity that I have ever encountered in a human being." (AE I.) The Program Manager for the base's operation support and services stated, "Physicians like [Applicant] serve to bridge the gap between the American Doctors and the Iraqi patients utilizing both medical and cultural experiences; making the management, follow-up and movement of those Iraqi patients easier and safer." (AE H.) A lieutenant colonel who worked with Applicant from January to July 2009, as the Chief of the Medical Staff, commented that Applicant "is a truly remarkable individual who is very dedicated to the United States and the mission of the Department of Defense in Iraq." (AE J.) A major and a colonel signed a letter of recommendation for Applicant, stating that Applicant "has demonstrated the core values that the Air Force holds in the highest regard: Integrity First, Service before Self and Excellence in All Things." (AE K.) An administrator for the Dental Group at the base, a lieutenant colonel, recommends that Applicant receive a security clearance. She worked with him from January through May 2008. "I would be quite comfortable, putting my life in his hands if a situation were to require such measures . . . I wish we had more people like [Applicant] who would be willing to serve." (AE P.) All of Applicant's performance evaluations predominantly rate him as "Exceeds Requirements." (AE D.)

Applicant credibly and sincerely asserted pride in his U.S. citizenship at the hearing. He is very dedicated and enthusiastic about his ability to serve as a cultural advisor to the U.S. military in an area that he described as "the most targeted base, American base in Iraq." (Tr. 45; 98.)

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, VI.)

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

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(b) and 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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

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

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

Analysis

Guideline B, Foreign Influence

The security concern relating to the guideline for foreign influence is set out in AG ¶ 6:

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

AG ¶ 7 describes nine conditions that could raise a security concern, three 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

(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; 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 a heightened risk of foreign influence or exploitation.

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 brother and four sisters, 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 seek intelligence that is hostile to the U. S. interests. Applicant's relationship with his siblings also creates 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. He also owns a piece of property in Iraq, estimated to be valued at \$10,000. The evidence is sufficient to raise these three potentially disqualifying conditions.

After the government produced substantial evidence of those disqualifying conditions, the burden shifted to Applicant to rebut and prove mitigation. Four 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;

(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; and

(f) the value or routine nature of the foreign business, financial, or property interest is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

In the event terrorists would learn of Applicant's identity and presence in Iraq, his siblings 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 several factors: Applicant has limited communication with his five siblings; he does not disclose his last name at work; he does not visit them; and they do not know that he works in Iraq. 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 and his immediate family members have lived in the United States since 1999. He attended school here. He worked at various jobs for

seven years before obtaining his current position. His wife and three children are naturalized U.S. citizens, residing here. He owns substantial property in the United States. In contrast, his financial interests in Iraq are negligible. There is no evidence that he has connections or contact with people living in Iraq other than his five 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, who is 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 his two siblings every two or three months. He speaks to his other three siblings less frequently. He has not seen any of them since 1995.

In 1992, Applicant purchased a piece of vacant property that now has an estimated value of \$10,000. That amount of money is insignificant compared to his U.S. properties that total over \$400,000. He believed for many years that the Iraqi property was confiscated by the government. Other than being aware that he still has property rights, given his statement that he is not concerned about the vacant parcel, it is unlikely that any threat to confiscate the land would cause him concern or conflict. AG ¶ 8(f) is applicable.

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. 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 siblings to obtain such information. Second, he had numerous connections to Iraq before he immigrated to the United States in 1999. Following his birth, he spent his formative years there. He was educated at an Iraqi university and practiced medicine for twenty years in both public and private clinics. Third, five siblings remain residents and citizens of Iraq. Fourth, he maintains some contact with these family members and carefully monitors disclosure of his last name to provide security for 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 11 years, and has been a naturalized citizen since 2006. His spouse has been living in the United States since 1999 and is also a naturalized citizen, as are his three Iraqi-born children, now adults. He owns property here, worth more than \$400,000. In his current employment, he provides vital and direct support to the U.S. Armed Forces as a cultural and medical advisor. After leaving Iraq in 1995, he did not return until May 2007, when he was deployed there. His ties to the United States are much 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. He has worked diligently for a defense contractor for several years in an important capacity. 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. Since returning to Iraq in 2007 with the U.S. military, he has not had any physical contact with his family. There is no derogatory information about him in the record.

Applicant has 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 influence.² 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.c: 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

² 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.