



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



In the matter of:)	
)	
)	ISCR Case No. 09-07199
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, I grant Applicant's eligibility for access to classified information.

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) version of a security clearance application (SF-86) on November 4, 2009. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on May 19, 2010, detailing security concerns under Guideline B, Foreign Influence, that provided the basis for its preliminary decision to deny him a security clearance. 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 adjudicative guidelines (AG) implemented on September 1, 2006.

Applicant acknowledged receipt of the SOR on June 15, 2010. He submitted a notarized, written response to the SOR allegations dated June 16, 2010, and requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and mailed Applicant a complete copy on November 9, 2010. Applicant received the FORM. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted a response on December 20, 2010. DOHA assigned this case to me on January 3, 2010. The Government submitted 14 exhibits, which have been marked as Items 1-14 and admitted into the record. The Government exhibits include the SOR, Item 1, and Applicant's response to the SOR, Item 3. Applicant's written response to the FORM is admitted into the record as Applicant Exhibit A (AE A). He also submitted additional documents by e-mail. The Government does not object to the admission of these documents, which are marked as AE B and admitted into the record.

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 were not admitted into evidence, but were included in the record as Hearing Exhibit I-V. The facts administratively noticed will be limited to matters of general knowledge and matters not subject to reasonable dispute, and are set out in the Findings of Fact below.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in the SOR. His admissions are incorporated herein as findings of fact. He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence, I make the following additional findings of fact.

Initially, I take administrative notice of the following generally known facts about Iraq. In 1932, Iraq gained independence from British administration under a League of Nations Mandate after many years of rule by other countries. Beginning in 1958, coups overthrowing the country's leadership led to dictatorship governments, with the last dictatorship, of Saddam Hussein, ending in 2003. In 1996, the Kurds and Sunni Iraqis rebelled against Saddam Hussein. The Iraqi Army crushed the rebellion, killing thousands of Kurds.

In 2005, the Iraqi citizens adopted a new constitution and participated in national parliamentary elections to create a permanent, democratic government. The new government has made significant political, economic, and security progress in recent years, but Iraq still faces many challenges, including overcoming three decades of war and government mismanagement that stunted Iraq's economy; and sectarian and ethnic tensions that have slowed progress through national reconciliation. The decrease in the number of insurgent attacks and overall improvements in security have spurred new

economic growth in Iraq. However, conditions in Iraq remain dangerous and unpredictable. Iraq is a strong ally of the United States in counter-terrorism. The goal of the United States policy in Iraq is the emergence of an Iraq that is sovereign, stable, and self-reliant.

Applicant, who is 42 years old, works as a linguist and interpreter for a Department of Defense contractor. He is fluent in three languages, English, Arabic, and Kurdish. He began his employment with his current employer in November 2008.¹

Applicant was born in Iraq. He was raised in Kurdistan in Northern Iraq and is Kurdish. He married in 1995 and has three children. His wife and children live with him in the United States. His mother and father, who are retired, his three brothers, his three sisters, and his mother-in-law live in Northern Iraq and are Kurdish. His family members are not members of any political organization in Iraq or other international organization identified to him during his interview. One brother is a judge in Kurdistan, but is not involved in politics. He has spoken with this brother twice in the last 10 years. He speaks with his other family members living in Iraq about once a month, and his wife speaks with her mother regularly. There is no evidence that he has any other contact with his family. He did not serve in the Iraqi Army as a young person. Rather, he worked as a civil engineer for two years in lieu of military service as he had a degree in engineering.²

After the first war between Iraq and the United States, the Kurds rebelled against Saddam Hussein in 1996. Saddam Hussein's Army responded with force, crushing the rebellion. His Army killed many Kurdish people at this time. Applicant was then working for the United States and the United Nations in Northern Iraq. He and family hid in the mountains because they were in danger of harm from the Iraq Army. The United Nations provided Applicant and his family safe exit out of Iraq to Guam in December 1996. Once in Guam, Applicant applied for political asylum, which the United States granted him. He, his wife, and his oldest child immigrated to the United States in April 1997. His two younger children were born in the United States. Since immigrating to the United States, Applicant and his family traveled to Kurdistan in 2000 and 2004 to visit family. Applicant denied any contact with or problems from Iraqi government officials during his visits with his family. He does not provide financial support for his family in Iraq nor does he own property in Iraq.³

Applicant, his wife, and oldest child became naturalized United States citizens in 2003. Applicant received a United States passport in 2004, which he uses for travel outside of the United States.⁴

¹Item 4.

²*Id.*; Item 3; Item 5; Item 8; Item 10; Item 12.

³*Id.*

⁴Item 4; Item 11; Item 12; Item 13.

After he became a United States citizen, Applicant worked as a linguist for a Department of Defense contractor in Iraq from November 2004 until January 2006. In his April 2005 performance evaluation, his supervisor described him as an invaluable asset, especially in interrogations. As a linguist and interpreter, Applicant's job required him not only to translate accurately, but to mirror the tone, attitude, and demeanor of the interrogator, something few interpreters are capable of doing. His supervisor described him as a natural translator, who used all of the above skills well, and considered him one of the best translators. He recommended Applicant for any linguist position. Applicant received three letters of recommendation from the United States Army, describing his translation skills in a similar manner. The Army also described him as a team player, who never showed fear during assaults on enemy positions or attacks by the enemy on his position.⁵

After his job ended in January 2006, Applicant did not return to work until June 2006. While unemployed, he lived off his savings. He worked for another Department of Defense contractor as an interpreter in Iraq from June 2006 until January 2007. After two months of unemployment, he worked in private industry as a drafter from March 2007 until November 2008, when he accepted his present position as a linguist.⁶

Applicant provided six certificates praising his service in Iraq in 2005, 2006, 2009, and 2010. He also provided additional letters of recommendation from his colleagues in Iraq. The writers praised his translator skills, again highlighting his excellent abilities. He is considered "extremely trustworthy and a team member" with invaluable skills. The record contains no evidence that the Iraqi government targeted him because of his work with the United States military.⁷

In his response, Applicant expressed his loyalty to the United States. Like other Kurds, He is grateful to the United States for its help to Kurdistan after Saddam Hussein's Army crushed the 1996 rebellion. Because of this help, he wants to work for the United States in Iraq.⁸

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 list potentially

⁵Item 14.

⁶Item 7; Item 8; Item 9; Item 12.

⁷AE A; AE B.

⁸*Id.*

disqualifying conditions and mitigating conditions, which are used 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, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." An applicant has the ultimate burden of persuasion for 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 an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

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

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in United States 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 conditions that could raise a security concern and may be disqualifying:

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and

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

Applicant, his wife and his children are all United States citizens and reside together in the family home in the United States. Applicant does not claim Iraqi citizenship nor does his family in the United States. His relationships with his wife and children are not a security concern. However, his retired parents, three brothers, three sisters, and mother-in-law are citizens and residents of Kurdistan in Northern Iraq. He talks by telephone with his various family members about once a month, except his brother who is a judge. He has spoken with this brother on two occasions in the last 10 years. He visited his parents and siblings in 2000 and 2004. He does not talk with his wife's mother, but his wife does. He does not provide any financial support to his family members in Iraq. His family relationships and his wife's family contacts are not *per se* a reason to deny Applicant a security clearance, but his and his wife's contacts with family members must be considered in deciding whether to grant Applicant a clearance. The government must establish that these family relationships create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion or would create a potential conflict of interest between his obligations to protect sensitive information and his desire to help his family members.

In determining if a heightened risk exists, I must look at Applicant and his wife's relationship and contacts with family members as well as the activities of the Government of Iraq and terrorists organizations within Iraq. See ISCR Case No. 07-05809 (App. Bd. May 27, 2008). The risk that an Applicant could be targeted for manipulation or induced into compromising classified information is real, not theoretical. Applicant's relationship and contacts with his parents and siblings in Iraq raises a heightened risk because terrorists continue to act against the United States and the development of a strong democracy in Iraq.

Under the adjudicative guidelines, the potentially conflicting loyalties may be weighed to determine if an applicant can be expected to resolve any conflict in favor of the United States interests. Concerning Applicant and his wife's contacts with family members in Iraq, I have considered the dangers in Iraq, as the country changes from years of a dictatorship to a parliamentary democracy government. The new government works to build a coalition with various groups, including the Kurds. Splinter groups continue to perform acts of terrorism in Iraq away from where his family resides. The United States is a large democracy. Iraq and the United States are working together to create an independent Iraq. Iraq supports the United States efforts against terrorism. While none of these considerations by themselves dispose of the issue, they are all factors to be considered in determining Applicant's vulnerability to pressure or coercion because of his family members in Iraq. His contacts with his family members establish that there is a heightened risk. AG ¶¶ 7(a) and 7(b) apply.

In deciding if Applicant has established mitigation, under AG ¶ 8 (a), I must consider:

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 United States;

and under AG ¶ 8(b), I must consider whether Applicant has established:

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 United States, that the individual can be expected to resolve any conflict of interest in favor of the United States interests.

Applicant's relationship with his family members is not a basis to deny him a security clearance; however, his burden of proof on mitigation requires more than statements about the limited scope of his conversations with his parents, siblings, mother-in-law, and his two conversations with his one brother. See ISCR Case No. 07-02485 (App. Bd. May 9, 2008). Applicant's parents, siblings, and mother-in-law have never held a political position in Iraq. His brother who is a judge is not involved in politics

either. Applicant's family has not been targeted by the Iraqi government or terrorists. His family members have never been arrested or imprisoned. Despite his work with the United Nations and the United States in the 1990s, the Iraqi government did not make any overt contacts with him when he visited his family in 2000, when Saddam Hussein still held power in Iraq. His closest family members are residents of the United States. Since he became a United States citizen in 2003, he has exercised the rights and privileges of his citizenship.

After becoming a United States' citizen, Applicant obtained a job as a linguist and returned to Iraq and work effectively as a translator for the United States government. His supervisor and Army colleagues expressed great confidence in his skills. They consider him an invaluable asset to their work because of his exceptionally good translation skills. He worked side-by-side with the military in different and dangerous parts of Iraq, as the United States and Iraqi Army sought to remove insurgents and stabilize an area. Applicant has worked in Iraq on three separate occasions, supporting the United States Army in the war on terrorism. He appreciates all the United States did for the Kurdish people in the 1990s. Because of this help from the United States, he wanted to support the United States Army in Iraq and has done so.

Balancing all these factors against the dangerous conditions still in Iraq and the continued terrorist activities, I find that Applicant would resolve any conflict in favor of the interests of the United States. Applicant has mitigated the security concerns under AG ¶¶ 8(a) and 8(b).

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 an 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.

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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is

established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has many family members still living in Northern Iraq with whom he continues to have contact. In the 1990s, Applicant worked for the United States and the United Nations, which, under Saddam Hussein, was unacceptable. When his life was in danger, Applicant and his immediate family hid out in the nearby mountains until the United Nations was able to arrange their departure from Iraq. The United States granted his request for political asylum in 1997, which allowed he, his wife, and oldest child to immigrate into the United States. He became a naturalized citizen and now works to support the efforts of the United States in Iraq. He is extremely grateful for what the United States did for him and his immediate family. To show his appreciation, he has placed himself in harms way to help the United states achieve its goals in Iraq and is willing to continue doing so despite the existing dangers in Iraq. The Iraqi government is moving forward with a democratic form of government with the assistance of the United States. He and his family in Iraq do not have ties with organizations which seek to harm the United States or overthrow the current Iraqi government. From the evidence of record, it is clear Applicant would resolve any conflicts in favor of the United States, his country of choice.

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 security concerns related to his family living in Iraq under Guideline B.

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

Conclusion

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

MARY E. HENRY
Administrative Judge