



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-07326
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: John B. Glendon, Esquire, Department Counsel

For Applicant: *Pro se*

July 30, 2010

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

On February 2, 2010, the Defense Office of Hearings and Appeals (DOHA) issued 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 adjudicative guidelines (AG).

In a February 14, 2010, response, Applicant admitted the allegations raised. I was assigned the case on May 3, 2010. Department Counsel and Applicant agreed to a June 15, 2010, hearing date. DOHA issued a Notice of Hearing to that effect on May 14, 2010.

The hearing took place as scheduled. Department Counsel submitted five documents which were accepted into the record as exhibits (Exs.) 1-5. He also submitted a file of official U.S. documents containing facts about Iraq. It was accepted

as desk exhibit (DX) 1 i-v without objection. Applicant gave testimony and submitted six documents, accepted as Exs. A-F, without objection. Applicant was given through June 22, 2010, to submit any additional materials. On June 16, 2010, Applicant submitted six additional documents, which were accepted collectively into the record as Ex. G without objection. The transcript (Tr.) was received on June 24, 2010. The record was then closed. Based upon a review of the case file, exhibits, and testimony, Applicant's security clearance is granted.

Administrative Notice

The Government requested administrative notice of certain facts related to Iraq, as represented in the materials comprising DX 1 i-v. I take notice of the following facts: The Republic of Iraq is a parliamentary democracy. It proclaimed its current constitution in 2005 and held free elections in 2006, after a U.S.-led coalition removed Saddam Hussein and his Ba'athist regime from power. In the wake of that transition, the United States and its allies have endeavored to set a solid foundation of democratic institutions in Iraq.

In 2007, 92% of Iraq's exports were in 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. To that end, the United States has worked closely with Iraq's new government and invested in the reconstruction of Iraq. Success in Iraq is a high priority of the United States.

Despite the presence of U.S. forces and the new government, terrorist forces, insurgents, and forces armed by terrorist groups continue to plague Iraq. The U.S. Department of State continues to warn U.S. citizens of the inherent danger in traveling to and through Iraq. While stability is being slowly restored and economic prosperity is returning to the region, Iraq remains a dangerous and unpredictable place, particularly in the International (or Green) Zone and northern Iraq. In addition to the threat of terrorism, sectarian violence often occurs. As recently as January 2010, an American citizen was kidnapped in Baghdad.¹

Furthermore, there are U.S.-substantiated reports of human rights abuses, including a "climate of violence; misappropriation of official authority by sectarian, criminal and insurgent groups; arbitrary deprivation of life; disappearances; torture and other cruel, inhuman, or degrading treatment or punishment."² The new government's effectiveness in adhering to the rule of law has been hampered by on-going violence, corruption, sectarian bias, and the lack of civilian oversight and accountability.³ Despite

¹ DX 1, Administrative Notice, Subpart iii (U.S. Dep't of State, *Travel Warning: Iraq*, Feb. 25, 2010).

² DX 1, Administrative Notice, Subpart v (U.S. Dep't of State, 2008 *Country Reports on Human Rights Practices: Iraq*, Feb. 25, 2009).

³ DX 1, Administrative Notice.

improvements, the U.S. Department of State consistently maintains that Iraq remains a dangerous and unpredictable place.⁴

Findings of Fact

Applicant is a 48-year-old interpreter working for a defense contractor. He was raised in Baghdad.⁵ After high school, when he was 19 years old, he went to study in Europe in order to escape the ill treatment his family received in Iraq.⁶ Linguistic difficulties led him to Morocco to continue his studies. He arrived in Morocco in 1981. He continued his studies in Morocco until he completed law school in 1987. Applicant then decided to emigrate to the United States. He chose to move to the United States because, after studying the U.S. Constitution in school, he wanted to live in “the land of opportunity and the land of freedom.”⁷ He hoped to settle and start a family. Today, he considers the United States to be his true home.

Applicant arrived in the United States in September 1987. In 1988, he married a woman he met during his studies. They divorced in 1990. From 1988 until 2000, Applicant managed a pizzeria. He remarried in 1995, the same year he received a green card. Applicant and his current wife have two children, both of whom are still in school.⁸ His spouse is a registered nurse. From 2000 through 2004, Applicant managed a restaurant.

In February 2005, Applicant became a U.S. citizen. He does not maintain dual citizenship with any foreign nation.⁹ In March 2005, he received a U.S. passport. In April 2005, Applicant found work with his present employer. He was assigned to act as an interpreter for the United States military, utilizing his extensive knowledge of Arabic, Spanish, and English. He has been devoted in his efforts to support the United States and coalition forces in their effort to maintain stability in the Middle East. Among his assignments were several months as a prison translator in Iraq, an extensive assignment working with high level detainees, and lending support to a notable strategic assignment.¹⁰ He was commended for his work with interrogations, which

⁴ DX 1, Administrative Notice, Subparts i-v.

⁵ Tr. 39.

⁶ Tr. 11.

⁷ Tr. 11.

⁸ Both Applicant’s current and former spouses are U.S. citizens.

⁹ Tr. 33. Applicant tendered his expired Iraqi passport to Iraqi officials.

¹⁰ Tr. 18-22.

continued through 2007.¹¹ His more recent assignments involved advising the U.S. military regarding cultural practices and local activities, as well as aiding in area assessment.¹² Most recently, he was assigned to work in a rural area north of Baghdad, where he assisted with atmospheric intelligence.¹³ That area was formerly controlled by Al Qaeda, but its presence there “has almost completely disappeared.”¹⁴

Today, Applicant continues his work as an interpreter in the Middle East. He travels there on a visa and pays a fine on his departure because he is a U.S. citizen.¹⁵ Applicant continues to share his unique linguistic skills and vast knowledge of Arabic culture. Despite his current assignment, he does not maintain a bank account or any business interests in Iraq. While abroad, Applicant maintains contact with his wife and children in the United States. Here, his wife, a registered nurse, has an established career. His eldest child volunteers at Applicant’s wife’s place of employment. Applicant’s family regularly participates in community cleanup projects. Applicant no longer has a mortgage. His approximately \$500,000 home is unencumbered.¹⁶ He has investments worth about \$800,000.

Applicant comes from a large family that was critical of the former regime in Iraq. “My mom once told me if we worked day and night until we died we [sic] never pay back the American [sic] because they removed Saddam Hussein from . . . power.”¹⁷ Applicant has one sister who lives in the United States. She followed her husband to this country after his family left Iraq as refugees.¹⁸ The rest of Applicant’s family remains in Iraq, where they are citizens and residents. This includes two other sisters, five brothers, and an elderly mother. Most of his family members live in or around Baghdad, although one brother lives in another city.¹⁹ One brother, who is unemployed and mentally ill, and one sister live with Applicant’s mother. The other brothers consist of a grocer, a veterinarian, a government-employed security officer, and a military officer in the Iraqi army. Except for the brother who lives with their mother, all of Applicant’s brothers are married. None of their wives work outside of the home. The military officer brother was a colonel in the

¹¹ Tr. 19-25; Exs. G (Recommendations and honors).

¹² Tr. 35-37.

¹³ Tr. 37.

¹⁴ Tr. 39.

¹⁵ Tr. 25.

¹⁶ Tr. 52.

¹⁷ Tr. 47.

¹⁸ Tr. 41.

¹⁹ *Id.*

Iraqi Army until the regimes changed in the mid-2000s.²⁰ He then started a private business. He recently rejoined the reorganized Iraqi Army as a Lieutenant Colonel, teaching in Iraq's military school.²¹

When Applicant has contact with his siblings, it is by telephone and usually occurs about once a year.²² Noting that he is busy with his own life and family, and that his siblings and other relatives are similarly busy with their own lives, Applicant credibly testified that he has little contact with his family in Iraq. "We're not like it used to be when we were kids, [living] together in one house. Now we are grownup people and each one of us has his own family."²³ He has not informed his foreign family members that he works in Iraq.²⁴ At the hearing, Applicant testified that he had not spoken with any foreign family members in the six or seven months before the hearing.²⁵ He speaks with his widowed mother slightly more, checking on her health about twice a year.²⁶ Otherwise, he has "zero communication" with family abroad.²⁷ When Applicant first started working in the Middle East, he purposefully limited his communication with his family in Iraq in order to maximize their respective security and privacy.²⁸ He does not tell them he works in Iraq, nor does he contact them when he is in Iraq.²⁹ His family thinks he still works in a restaurant.³⁰ Applicant last saw his family in Iraq on a visit in 2004, before he started his current work.³¹

Because Applicant worked in a prison in Iraq, he no longer freely travels within the country. When in Iraq, he stays on a secure base. Applicant has complied with all

²⁰ Tr. 29-30.

²¹ Tr. 44.

²² Tr. 30.

²³ Tr. 28.

²⁴ Tr. 28.

²⁵ Tr. 28.

²⁶ *Id.* Applicant's father owned and managed a family business. Tr. 47.

²⁷ Tr. 29.

²⁸ Tr. 46.

²⁹ Tr. 49-50.

³⁰ Tr. 50.

³¹ Tr. 48.

instructions regarding discretion in his assignments and maintaining minimal contact with family members abroad.³²

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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. Under AG ¶ 2(c), this 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.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . ." ³³ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.³⁴

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.

³² Tr. 51.

³³ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”³⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.³⁶ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.³⁷ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find Guideline B (Foreign Contacts) to be the most pertinent to the case. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are discussed below.

Analysis

The concern under Guideline B is that 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. The adjudication 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 U.S. citizens to obtain protected information or is associated with a risk of terrorism. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are set forth and discussed in the conclusions below.

The country at issue is Iraq. Since the overthrow of Saddam Hussein, the United States has had a unique relationship with that country. In many respects, the two countries are partners. Despite improvements in that country, the State Department continues to depict Iraq as dangerous and unpredictable, noting that numerous insurgent groups remain in that country. Terrorist tactics are not uncommon. Therefore, considerations under this guideline must be conducted with the highest scrutiny.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Executive Order 10865 § 7.

The SOR contains four allegations under this guideline: First, Applicant's mother is a citizen and resident of Iraq. Second, seven of his siblings are citizens and residents of Iran. Third, one brother was a Colonel in the Iraqi army. Fourth, Applicant visited Iraq in 2004.

Over the years and across the miles, Applicant's ties with his family members in Iraq have faded. Despite Applicant's purposefully guarded and limited contact with his family members in Iraq, he maintains ties with his mother and siblings. Indeed, one of Applicant's considerations for keeping his work and his location a secret from them is to assure their mutual security. Given the facts presented, Foreign Influence Disqualifying Conditions AG ¶ 7(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 exploitation, inducement, manipulation, pressure, or coercion) and AG ¶ 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) apply.

In choosing to utilize his unique skills and serve the U.S. military, Applicant knowingly undertook dangerous and highly meaningful work. To pursue that work, he purposefully altered his relationships with his family members living in Iraq. He ceased visiting Iraq in 2004. He limited his contact with his siblings to annual phone calls. He maintains contact with his elderly mother only about twice a year, by telephone. He does not contact his relatives when he is in Iraq. He has not let them know that he left his life as a restaurant manager in 2004. Such intentional changes altered the nature of his familial relationships. Through these efforts, he has not only isolated them from knowledge of his work on behalf of this country, but, as instructed, helped to insulate himself. While danger still exists in Iraq, Applicant's nexus to family members in Iraq does not heighten his risk. Consequently, Foreign Influence Mitigating Conditions AG ¶ 8(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.) and AG ¶ 8(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) apply .

Applicant has demonstrated commitment to, and satisfaction with, his life as a U.S. citizen. His interpretative skills and commitment to the United States are valuable assets in the current efforts to resolve conflict in the Middle East, as are his brother's efforts in training the new Iraqi army. Moreover, Applicant's depiction of his current relationships with family members in Iraq is notable in its accentuation of his sense of professionalism over any sense of sentimentalism. He calls the United States his true home. It is where he started his family, built a home, and acquired a financial portfolio valued in excess of \$1.3 million dollars. It is where his wife is employed and his children

attend school. Applicant adheres to his mother's belief that the United States is to be thanked for the removal of Saddam Hussein, and he feels his work helps repay the debt incurred. His testimony revealed a man who would resolve any conflict between his family and this country in favor of the United States. Finally, there is no evidence that terrorists, criminals, the Iraqi government, or those conducting espionage have approached Applicant or his family, or that Iraqi officials have asked Applicant or his family for classified or sensitive information. In light of these considerations, AG ¶ 8(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). Foreign influence security concerns are 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 circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). 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.

A Guideline B decision concerning Iraq must take into consideration the geopolitical situation in Iraq, as well as dangers existing in Iraq. Iraq is a very dangerous place because of violence from insurgents and terrorists. Such forces continue to threaten the government of Iraq, the interests of the United States, U.S. Armed Forces, and our allies, as well as the citizens of Iraq. Applicant recognizes that his work in the Middle East could endanger his family in Iraq. The United States and Iraq are allies in the war on terrorism, and the United States is committed to the establishment of a free and independent government in Iraq. Iraq and the United States have close relationships in diplomacy and commerce.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the "whole-person" factors. Applicant's testimony was highly credible and forthright. He is an intelligent, direct, and mature professional. Appellant is well-educated and multi-lingual. He left Iraq as a teenage, in pursuit of higher education in a free environment. He came to the United States in his mid-20s in order to build a new life in a land offering freedom and opportunity he did not find elsewhere. He persevered at his work, started a family, and achieved financial success. His family and all of his assets are in the United States. He purposefully undertook potentially dangerous work for the U.S. military. He often put himself in harm's way, working alongside U.S. Armed Forces on several operations while providing essential services. He has made significant contributions to national security, fully aware of the risks to himself and his family. He has proven himself to be

uniquely talented. In undertaking that work, he purposefully partitioned himself from his family members still living in Iraq. All these factors demonstrate that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group at coercion or exploitation.³⁸ Applicant's strong personal and financial connections in the United States, as well as his commitment to the United States and its efforts, demonstrate "such deep and longstanding relationships and loyalties in the U.S., [that he] can be expected to resolve any conflict of interest in favor of the U.S. interest."³⁹

After weighing the evidence of Applicant's connections to Iraq and to the United States, his often emotional testimony, and all the facts previously noted, I conclude he has carried his burden of mitigating the foreign influence security concerns cited. I take this position based on the law, as set forth in *Department of Navy v. Egan*, 4848 U.S. 518 (1988), my "careful consideration of the whole person factors"⁴⁰ and supporting evidence, my application of the pertinent factors under the adjudicative process, all the evidence in this decision, and my interpretation of my responsibilities under the Guidelines. For the reasons stated, I conclude Applicant is eligible for access to classified information.

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 – 1.d:	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. Clearance granted.

ARTHUR E. MARSHALL, JR.
Administrative Judge

³⁸ See ISCR Case No. 07-00034 (App. Bd. Feb. 5, 2008).

³⁹ AG ¶ 8(b).

⁴⁰ See ISCR Case No. 04-06242 at 2 (App. Bd. Jun. 28, 2008).