DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 09-07647
	)	
	)	
	)	
Applicant for Security Clearance		

Appearances

For Government: Ray Blank Jr., Esquire, Department Counsel
For Applicant: John F. Mardula, Esquire

January 13, 2011

Decision

RIVERA, Juan J., Administrative Judge:

Applicant mitigated security concerns under Guidelines B, C, and F. However, he falsified his 2004 security clearance application (SCA) and deliberately disregarded his company's out-processing procedures after he was terminated from his employment while deployed to Iraq. He stayed with an Iraqi friend in Iraq without notifying his employer, and he failed to return and used without authorization the two U.S. government identification badges issued to him after he was terminated from his employment. His actions show questionable judgment, untrustworthiness, unreliability, lack of candor, and an unwillingness to comply with rules and regulations. Clearance denied.

Statement of the Case

Applicant submitted a security clearance application on September 30, 2004. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary

affirmative finding[1] that it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

On May 14, 2010, DOHA issued Applicant an SOR, which specified the basis for its decision – security concerns under Guideline E (Personal Conduct), Guideline B (Foreign Influence), Guideline C (Foreign Preference) and Guideline F (Financial Considerations) of the adjudicative guidelines (AG).[2]

On June 7, 2010, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. The case was assigned to me on August 17, 2010, to determine whether a clearance should be granted or denied. DOHA issued a notice of hearing on September 7, 2010, scheduling the hearing for September 16, 2010. The hearing was convened as scheduled.

The Government offered Exhibits (GE) 1 through 13. GEs 1 and 3 through 12, were admitted without objection. GE 2 was admitted over Applicant's objection. GE 13 is a request for me to take Administrative Notice of certain facts about the government of Iraq. Applicant did not object, and the request was granted. GE 13 was marked for identification, but not admitted. Applicant testified, and he presented Exhibits (AE) 1 through 26. AEs 1 through 24 were admitted without objection. AEs 25 and 26 were submitted after the record closed and they were not admitted. DOHA received the transcript of the hearing (Tr.) on September 27, 2010.

Procedural Issue

Applicant requested an expedited hearing. (Hearing Exhibit (HE) 1) At hearing, Applicant affirmatively waived his right to 15 days advance notice of his hearing. (Tr. 11)

Findings of Fact

Applicant admitted in part and denied in part the factual allegations in the SOR ¶¶ 1.a, 1.c, 2.i, 2.j, and 4.a, with explanations. He admitted SOR ¶¶ 1.b, 1.b(1), 1.b(2), 1,b(3), 2.a, 2.b, 2.c, 2.e, 2.f, 2.g, 2.h, and 3.a, with explanations. He denied SOR ¶¶ 2.d and 3.b, with explanations. His admissions are incorporated here as findings of fact. After a thorough review of the evidence of record, and having considered Applicant's demeanor and testimony, I make the following findings of fact.

Applicant is a 43-year-old software engineer working for a government contractor. He recently applied for an Arabic linguist position with another government contractor. He seeks his security clearance eligibility to qualify for the new job.

[1] Required by Executive Order 10865, *Safeguarding Classified Information Within Industry,* dated February 20, 1960, as amended; and Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as revised.

[2] Adjudication of this case is controlled by the AGs, implemented by the DoD on September 1, 2006.

Applicant was born, raised, and educated in Iraq. He attended college in Iraq from 1987 until 1989, to avoid being drafted into the Iraqi military service. While in college, he was elected to a position with a student union. He claimed he was expelled from college because he wrote a petition to the then government of Iraq on behalf of the student union asking for more freedom of speech. His petition was seen as criticism of Saddam Hussein's regime and an attempt to incite Iraqis to stand up against Iraq's government. He also testified that one of his uncles, a university professor, was executed by the Hussein's regime in 1989 because he expressed his pro-democracy opinions in the classroom.

In 1990, at age 23, Applicant fled to the United States and entered the country under a student visa. He was sponsored into the United States by an older brother residing in the United States. Applicant studied computer science, graduating with a bachelor's degree from a U.S. university in August 2000. He took approximately $40,000 in student loans to pay for his college education. He became a naturalized U.S. citizen in August 2001. When he was naturalized, Applicant changed his Arabic name to his English name.

Applicant considers the United States his home and testified his loyalties lie completely with the United States. His Iraqi passport expired 20 years ago and he has since destroyed it. He has only used a U.S. passport since his naturalization. Applicant stated he never worked in Iraq prior to immigrating, he has never voted in an Iraqi election, and he has not received or is entitled to any benefits (economic or otherwise) from the Iraqi government.

Applicant and his wife met when they were both growing up in Iraq. Their family members were all citizens and residents of Iraq, and friends of each other. In 2003, while working for a U.S. contractor in Iraq, Applicant started dating his now wife. He married his wife in Iraq in February 2004, and the wedding was celebrated in April 2004. He then took his wife to another Middle East country for two weeks to apply for her entry visa to the United States. While working for a U.S. contractor in 2003, Applicant applied for a position with another U.S. contractor. He then returned to the United States in 2004, to take the position and in-process with his new employer. He left his wife in Iraq with her family.

Consequential with his employment offer, Applicant submitted a SCA in September 2004. In his answer to question 8 of the SCA (asking what was his current marital status), Applicant stated "Never married." He failed to disclose his February 2004 marriage. Applicant claimed this was an innocent mistake and that he never intended to mislead the government. He further claimed that when he realized his mistake, he contacted the company's facility security officer, disclosed he was married in 2004, and asked for the correction of his SCA. He failed to produce any documentary evidence to support his claim. Applicant also failed to disclose his delinquent student loans in his 2004 security clearance application.

In 2004, Applicant established a construction and trade company in Iraq. He was trying to help in the reconstruction of Iraq, while taking advantage of the reconstruction dollars being poured into the country. His venture never materialized, and the company folded without making any money. Applicant's wife and her family own two pharmacies in Iraq. While she was living in Iraq, she ran one pharmacy out of one of her father's buildings. He testified that when his wife immigrated to the United States in April 2006, the pharmacy closed and it is no longer open for business. However, he estimated the pharmacy's value to be around $20,000. His wife passed the U.S. pharmacist's certification in 2010, and she has no plans to return to work or live in Iraq. She intends to sell her interest in the pharmacy in Iraq.

Applicant testified that, except for his wife's interest in the Iraqi pharmacy, he and his wife no longer have any financial or property interests in Iraq, and that all of their financial and property interests are in the United States. Applicant's wife became a naturalized U.S. citizen in 2009. His three-year-old daughter was born in the United States.

From June 2001 to July 2002, Applicant volunteered to work with a U.S.-based not-for-profit organization as a database programmer on a program to help fight poverty in his state of residency. From 2003 until 2008, Applicant was employed in one way or another for seven government contractors assisting the U.S. military in the Middle East as an Arabic translator, intelligence analyst, interrogator support specialist, and as a media analyst. His employment required him to work side by side with U.S. and allied military forces in dangerous and hostile areas. Apparently, while working for some of the U.S. government contractors, Applicant had access to classified information. There is no evidence that he has compromised or caused others to compromise classified information, or that he has been involved in any security violations.

Applicant is considered to be a loyal U.S. citizen and a proud American. He presented numerous highly favorable letters of reference and commendation issued to him by government contractors, U.S. and British military personnel, and supervisors. He was lauded for his Arabic language ability and his technical and tactical skills. He was recognized for his leadership, integrity, judgment, and ability to take effective action in rapidly-changing and stressful situations. He is considered to be the consummate professional because of his self-motivation, hard-charging attitude, ability to work with others, and outstanding performance. Because of his origin, linguistic ability, and cultural background, Applicant was considered to be an invaluable resource to the U.S. government contractors and agencies he worked for in the Middle East.

Applicant was injured twice in the performance of his duties for U.S. contractors while accompanying U.S. and allied forces in Iraq. In June 2003, during a raid to arrest local arms dealers, he was thrown out of the vehicle, causing a severe muscle strain in his back. And, in October 2003, while working with British military forces, he was bitten by a military working dog.

In 2008, Applicant was involved in personality conflicts with two other U.S. contractor employees. He was terminated from his employment in November 2008, because he was creating a "hostile work environment." Applicant strongly denied these allegations. He averred that other linguists of Arabic descent disliked him and made false allegations against him because of their resentment about Applicant's work ethic and hard-charging attitude.

Applicant was informed of his termination at a meeting with one of his supervisors. He was instructed to report to a company area for out-processing and to fly out of Iraq through company-made travel arrangements. Applicant disregarded his supervisor's instructions. He departed the company base area without permission and did not notify any of his supervisors. He stayed in the Green Zone of Iraq for approximately 20 days with an Iraqi friend who was allegedly working for another U.S. government contractor. He traveled back to the United States on his own travel arrangements. Applicant failed to return his U.S. Embassy badge and his DoD contractor identification badge to the U.S. contractor after he was terminated. He used the identification badges to travel inside of Iraq and to return to the United States.

Applicant knew from his employer's in-processing briefing and documents provided to him that he was required to follow his company's procedures to exit Iraq and to return to the United States. Applicant claimed he did not follow the company's procedures because he was intimidated by the tenor of the termination meeting and the presence of an armed escort at the meeting. He left the company base area because he was afraid he was going to be forced to sign documents waiving his right to sue the company for his wrongful termination. He did not return the identification documents because he needed them to travel inside and out of Iraq. He claimed he offered to return the identification documents to his employer after his return to the United States, but he was told he could keep them. Both identification documents had expired.

Applicant has numerous relatives who are residents and/or citizens of Middle East countries. His mother is 73 years old. She is a citizen and resident of Iraq. He has a close relationship of affection and obligation with his mother. In the past, he provided his mother with financial assistance. He used to send her $300 to $400 a month on a frequent basis. One time, he sent her $2,000 for repairs on her home in Iraq. He stopped providing financial assistance to his mother when he was informed that doing so could create security clearance concerns.

Applicant has a sister who is a citizen of Iraq, but resides with her husband and children in Kuwait. He has another sister and a brother both of whom were born in Iraq and became naturalized U.S. citizens in 2004 and 1988, respectively. Both siblings work for U.S. government contractors in Iraq and Afghanistan providing support to U.S. government agencies.

Additionally, Applicant has five brothers-in-law, one of which is a resident of England and a second is a U.S. resident. Three brothers-in-law and three sisters-in-law are all citizens and residents of Iraq. Applicant claimed that his and his wife's contact

with their relatives living in Iraq is casual, infrequent, and limited to occasional telephone calls during holidays and special family events. He claimed that none of his relatives is involved with or employed by the Iraqi government, and that they do not belong to organizations with interests inimical to the United States.

Between 1996 and 2000, Applicant took approximately $40,000 in student loans to pay for his college education. He graduated in August 2000. From 2000 until 2003, Applicant made little or no payments towards his student loans because his loans were either in deferment or forbearance as he was unemployed or working for a not-for-profit company. Although Applicant started working full time for government contractors in 2003, he claimed he was not able to make payments on his student loans because he was deployed overseas and it was very difficult for him to do business over the phone. In 2006, he paid $5,765 toward one of his student loans. He had received a $4,750 grant from his not-for-profit employer and used that money and some of his savings to pay one of his student loans.

Applicant worked for seven government contractors between 2003 and November 2008, and had substantial earnings. His yearly salaries were approximately $80,000 when he started and increased to $110,000; $150,000; and $180,000. In his last two years working for a U.S. contractor in Iraq, he was making around $170,000 a year. During 2007 and 2008, he was saving approximately $3,000 to $4,000 a month. At some point, he had savings totaling approximately $125,000 held in money market certificates or bank certificate of deposits in a U.S. bank.

In early 2008, Applicant started a rehabilitation payment program for his student loans and made a couple of payments. He stopped making payments when he was terminated from his job. In February 2010, Applicant started working for his current employer, making approximately $50,000 a year. He established a loan rehabilitation payment program, and has made eight consecutive payments of $950. When he makes his 10th payment, his student loan debt will be out of default. He currently owes approximately $50,000. He intends to aggressively pay his student loans until they are satisfied.

Policies

The President of the United States has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable to reach his decision.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See* Exec. Or. 10865 § 7. *See also* Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any expressed or implied determination about Applicant's allegiance, loyalty, or patriotism. 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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *See Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996); and ISCR Case 08-06605 at 3 (App. Bd. Feb. 4, 2010).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* AG ¶ 2(b).

Analysis

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

> Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant failed to disclose in his 2004 SCA that he married his wife in Iraq in February 2004. He claimed that his omission was an honest mistake and not made with the intent to mislead the Government. He also averred that when he realized he made the omission, he contacted his company's FSO and attempted to correct the SCA. Applicant has known his wife since they were children, but he started dating her in 2003, while he was working in Iraq for a government contractor. They were married in February 2004 and celebrated their wedding in Iraq in April 2004. Shortly thereafter, they travelled to another Middle East country where they stayed for two weeks while applying for her Visa to travel to the United States. He then left her in Iraq and travelled to the United States to accept and in-process for the job that required him to submit his September 2004 SCA. Considering the evidence as a whole, I find that he deliberately failed to disclose he was married to his then Iraqi wife.

In November 2008, Applicant was terminated from his job for creating a hostile work environment. During his termination meeting, Applicant was directed to out process using the company's established procedures and to travel out of Iraq using company-arranged transportation. Because of his work experience with other government contractors in Iraq and the training and documents he received from his company, Applicant knew that he was required to follow his company's procedures to enter and exit Iraq.

Applicant deliberately disregarded his company's out-processing procedures, and without authorization, stayed in Iraq for approximately 20 days with an Iraqi friend. He then flew out of Iraq into the United States on his own. When he was terminated, Applicant failed to return the U.S. Embassy badge and the DoD contractor badge that were issued to him as a result of his employment for the government contractor. He used both forms of identification to travel inside of Iraq and to depart Iraq. He knew that because of his termination, he was no longer authorized to use those identification badges, but he retained them to facilitate his movements in Iraq and to leave the country. His actions trigger the applicability of the following disqualifying conditions:

> AG ¶ 16(a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history

statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

AG ¶ 16(d): credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information:

(2) disruptive, violent, or other inappropriate behavior in the workplace;

(3) a pattern of dishonesty or rule violations;

(4) evidence of significant misuse of Government or other employer's time or resources; and

AG ¶ 16(f): violation of a written or recorded commitment made by the individual to the employer as a condition of employment.

AG ¶ 17 lists seven conditions that could potentially mitigate the personal conduct security concerns:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

After considering the above mitigating conditions, I find none apply. Applicant falsified his 2004 SCA. His falsification is a serious offense (felony-level).[3] Moreover, Applicant's deliberate failure to follow his company's out processing procedures, his unauthorized stay in Iraq, and his failure to return and his unauthorized use of the identification badges after he was terminated show questionable judgment, untrustworthiness, unreliability, lack of candor, and an unwillingness to comply with rules and regulations.

Applicant claimed that he "went out of the reservation" because he was intimidated during the termination meeting by the tenor of the meeting and the presence of an armed escort. He also stated he was afraid he would be forced to sign documents waiving his right to sue the company for his wrongful termination. Considering Applicant's age, background, education, and his experience working with different military units under dangerous and hostile conditions, I do not find his claim of intimidation credible.

Guideline B, Foreign Influence

Under AG ¶ 6 the Government's concern is that:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, he or she 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

[3] *See* 18 U.S.C. 1001.

target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 sets out four conditions that raise a security concern and 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;
>
> (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;
>
> (d) sharing living quarters with a persona or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion; 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 heightened risk or foreign influence or exploitation.

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. Appellant has frequent contacts and a close relationship of affection and/or obligation with his mother, siblings, extended family members, and his in-laws, some of whom are Iraqi citizens residing in Iraq.

These contacts create a possible risk of foreign pressure or attempted exploitation because there is always the possibility that Iraqi agents, terrorists, or criminal organizations in Iraq may exploit the opportunity to obtain sensitive or classified U.S. information. The record contains substantial evidence raising these four potentially disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the Government.

Six Foreign Influence Mitigating Conditions under AG ¶ 8 are potentially applicable to these disqualifying conditions:

> (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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

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

Appellant has a strong bond of affection and obligation toward his mother, family members, and in-laws. Notwithstanding, his contacts with his Iraqi family members do not raise a heightened risk of foreign exploitation.

Appellant has lived in the United States since 1990. He graduated from college in the United States and worked for U.S. contractors providing support to U.S. military and allied units in Iraq from 2003 until 2008. He risked his life while providing support for U.S. forces, and was injured twice performing his job. His past behavior show that his loyalties are to the United States and to his wife and daughter in the United States. He can be expected to resolve any possible conflict of interest in favor of the United States.

His financial and property interests are in the United States. His attempt to establish a trade and construction company in Iraq failed. He has no financial or property interests in Iraq. His wife's interest in the Iraqi pharmacy is small compared to the family's interests in the United States, including his home and bank accounts. Because of his past favorable behavior and his wife and daughter residing in the United States, I find that even if Applicant was placed in a position of having to choose between his wife's interests in Iraq and their U.S. interests, Applicant can be expected to protect the U.S. interests. AG ¶¶ 8(a), (b), (c), and (f) apply.

Guideline C, Foreign Preference

Under AG ¶ 9 the security concern involving foreign preference arises, "[w]hen an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States."

Under AG ¶ 10(a), Applicant may be disqualified for the "exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: . . . (3) accepting educational, medical, retirement, social welfare, or other such benefits, . . . and (5) using foreign citizenship to protect financial or business interests in another country."

Applicant's attempt to establish a trade and construction company in Iraq in 2004, and his wife's proprietary interest in a pharmacy in Iraq raise security concerns under the foreign preference guideline. AG ¶ 10(a) applies.

AG ¶ 11 provides six conditions that could mitigate the foreign preference security concerns:

> (a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;
>
> (b) the individual has expressed a willingness to renounce dual citizenship;
>
> (c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;
>
> (d) use of a foreign passport is approved by the cognizant security authority;
>
> (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and
>
> (f) the vote in a foreign election was encouraged by the United States Government.

For the same reasons discussed above under Guideline B, incorporated here, Applicant has mitigated the security concerns alleged under the foreign preference guideline. As previously stated, his 2004 business venture in Iraq failed and his wife's pharmacy is not operational. Her interest in the pharmacy is small compared to their financial and property interests in the United States. They do not have any other financial or property interest in Iraq. By all accounts, except for the concerns alleged in

the SOR, Applicant worked well and provided valuable support for U.S. military and allied forces in Iraq under dangerous conditions. He has made the United States his home since 1990. His loyalties are to the United States and his wife and children in the United States. On balance, I find Applicant's overall behavior does not indicate a preference for Iraq over the United States.

Guideline F, Financial Considerations

Under Guideline F, the security concern is that failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. AG ¶ 18.

The SOR alleged Applicant has delinquent student loans in collection that have been outstanding since 2000. Between 2000 and 2003, Applicant made little or no payments towards his student loans because his loans were either in deferment or forbearance as he was unemployed or working for a not-for-profit company. Applicant paid $5,765 in 2006 toward his student loan debt. He established a loan rehabilitation payment plan in early 2008, made a couple of payments, and then discontinued his payments because of his job termination. In 2010, he started another loan rehabilitation payment plan and has made eight consecutive payments of $975. Applicant's delinquent student loans raise the applicability of AG ¶ 19(a): "inability or unwillingness to satisfy debts;" and AG ¶ 19(c): "a history of not meeting financial obligations."

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

> (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
>
> (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
>
> (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
>
> (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

(f) the affluence resulted from a legal source of income.

From 2003 until 2008, Applicant was employed by seven government contractors and had substantial earnings. His yearly salary was approximately $80,000 when he started, and it increased to $110,000; $150,000; and $180,000, as he worked for different contractors. During his last two years in Iraq he was making around $170,000 a year, and he was saving approximately $3,000 to $4,000 a month. At some point, he had accumulated savings of approximately $125,000 held in money market certificates or bank certificate of deposits in U.S. banks.

Applicant's conduct does not warrant full application of AG ¶ 20(a) because his student loans are unresolved (recent behavior). It partially applies because in the past he made some attempts to pay the student loans, and he recently established a loan rehabilitation payment plan and made eight consecutive payments.

The evidence established some circumstances beyond his control contributing to his inability to pay his student loans, i.e., his initial period of unemployment after receiving his college degree, and his job termination in November 2008. AG ¶ 20(b) is partially established by the evidence. It only applies partially, because Applicant did not demonstrate financial responsibility when he failed to promptly address his student loans when he was fully employed and earning substantial pay checks between 2003 and his job termination in 2008.

AG ¶ 20(c) applies in part. Applicant demonstrated some desire to resolve his student loans in 2006, 2008, and recently in 2010 by establishing payment plans and making some payments. His actions establish only partial mitigation under AG ¶ 20(d), because he should have been more diligent and aggressive in the resolution of his student loans.

Considering the evidence as a whole, Applicant currently has a viable plan to resolve his student loans.[4] Outside of the delinquent student loans, there is no evidence Applicant had other delinquent debts, or that he was living beyond his financial means. Applicant now understands the possible adverse security clearance consequences of not maintaining financial responsibility. Although Applicant should have been more

[4] "[A]n applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct," that is, actions which evidence a serious intent to effectuate the plan. ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009), citing ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008).

diligent addressing his student loan debt, his past behavior and current financial situation do not raise security concerns under the financial considerations guideline.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the 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.

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. AG ¶ 2(c). I have incorporated my comments under Guidelines E, B, C, and F in my whole-person analysis. Some of the factors in AG ¶ 2(c) were previously addressed under those guidelines, but some warrant additional comment.

From 2003 until 2008, Applicant worked for seven government contractors assisting the U.S. and allied military forces in the Middle East. He worked side by side with military forces in dangerous and hostile areas. He is considered to be a loyal U.S. citizen and a proud American. He presented numerous highly favorable letters of reference and commendation issued to him by government contractors and U.S. and British military personnel. He was considered to be an invaluable resource to the organizations he served due to his outstanding performance.

Because of his past behavior and service to the United States under dangerous conditions, his foreign contacts and small property interest in Iraq do not raise a concern under Guidelines B and C. He has made the United States his home since 1990. His loyalties are to the United States and his wife and children in the United States. He can be expected to resolve any possible conflict of interest in favor of the United States.

Applicant established a viable payment plan to resolve his student loan debt. He now understands the importance of maintaining financial responsibility and what is expected of him to be eligible for a security clearance. Under the whole-person concept, Applicant's current financial situation does not create a security concern.

Applicant failed to mitigate the security concerns arising from his personal conduct. He deliberately falsified his 2004 SCA. He also deliberately disregarded his company's out-processing procedures, stayed in Iraq with a friend without authorization, and more importantly, he failed to return and used without authorization the U.S. government identification badges issued to him after he was terminated from his employment. His actions show questionable judgment, untrustworthiness, unreliability, lack of candor, and an unwillingness to comply with rules and regulations.

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 E:	AGAINST APPLICANT
Subparagraphs 1.a to 1.c:	Against Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 1.a to 1.j:	For Applicant
Paragraph 3, Guideline C:	FOR APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant
Paragraph 4, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant. Eligibility for a security clearance is denied.

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JUAN J. RIVERA
Administrative Judge